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INDIAN ADMINISTRATION

# INDIAN ADMINISTRATION.

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BY

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## PREFACE

This book is intended primarily to supply the need of a text-book for Undergraduates of the Indian Universities and in particular the First Year Arts and Commerce students of the Universities in the State of Bombay who have to study Indian Administration as one of the subjects for their examinations.

The constitutional machinery of a country is only comprehensible in terms of its history. The origin and growth of the Indian constitutional machinery is rooted in the history of India during British rule. The Constituent Assembly has drawn up the Constitution of India to meet the needs of India. But to the extent to which the present Constitution is the product and result of, and is conditioned by the past, we must know the past in order to understand the present Constitution and to appreciate its salient features.

The book is divided into three Sections. The first Section deals with the historical background which contains the growth and development of the constitutional machinery. The second Section deals with the Constitution in all its aspects including its first amendment in 1951, and the third Section deals with the administrative machinery. The treatment is analytical. I have endeavoured to simplify the material and present the subject in simple and non-technical language.

The book is primarily meant for students, but it is hoped that it will be useful to citizens also.

My thanks are due to the authors of various books I have consulted.

January 1953

G. N. JOSHI

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## Section I

### HISTORICAL BACKGROUND

"By transforming British India into a single Unitary State, it (British Rule) has engendered among Indians a sense of political unity. By giving that State a Government disinterested enough to play the part of an impartial arbiter, and powerful enough to control the disruptive forces generated by religious, racial and linguistic divisions, it has fostered the first beginnings, at least, of a sense of nationality, transcending those divisions. By establishing conditions in which the performance of the fundamental functions of Government, the enforcement of law and order and the maintenance of an upright administration, has come to be too easily accepted as a matter of course, it has set Indians free to turn their minds to other things, and in particular to the broader political and economic interests of their country. Finally, by directing their attention towards the object-lessons of British Constitutional history and by accustoming the Indian student of Government to express his political ideas in the English language, it has favoured the growth of a body of opinion inspired by two familiar British conceptions: that good Government is not an acceptable substitute for self-government, and that the only form of self-government worthy of the name is Government through Ministers responsible to an elected Legislature."

J. S. C. REPORT (1934)

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# **GROWTH AND DEVELOPMENT OF THE CONSTITUTION**

## **CHAPTER I**

### **GROWTH OF THE CONSTITUTION UP TO 1857**

#### **GENERAL**

The conquest or acquisition of India by the British was an outstanding event of modern history. The British came to India to trade, and in the process of trading, by the force of circumstances, became the rulers of India. The East India Company, which commenced trading in India under the Charter granted by Queen Elizabeth in 1600, conquered or acquired India with its own resources, but with the help and guidance of the British Parliament under the authority of, and on behalf of, the British Crown.

The origin and growth of administration in India is rooted in the history of British India. The history of British India falls into four periods. "From the beginning of the seventeenth to the middle of the eighteenth century, the East India Company is a trading corporation existing on the sufferance of native powers, and in rivalry with the merchant companies of Holland and France. During the next century the Company acquires and consolidates its dominion, shares its own sovereignty in increasing proportions with the Crown, and gradually loses its mercantile privileges and functions. After the mutiny of 1857 the remaining privileges of the Company are trans-



ferred to the Crown, and then follows an era of peace in which India awakens to new life and progress.”<sup>1</sup> During the third period India becomes politically conscious and demands a share in the administration of the country. The third period ends with the passing of the Government of India Act of 1919, based on the Declaration of August 20, 1917, which, among other things, accepted the gradual development of self-governing institutions with a view to the progressive realization of responsible government in India as an integral part of the British Empire as the guiding principle for future development. The fourth period begins with the introduction of Dyarchy in the Provinces in 1921. During this period India demands full responsible government. This period witnesses the passing of the Government of India Act, 1935, which inaugurates a new era in the constitutional development of India. This period ends on August 15, 1947, when India, under the Indian Independence Act 1947, becomes an independent Dominion. The achievement of independence by India in 1947 is an outstanding event of modern history.

#### THE EAST INDIA COMPANY AND OTHER CHARTERED CORPORATIONS: THE FIRST PERIOD (1600 TO 1765)

The first period (1600 to 1765), which is entirely a trading period, begins with the Charter of Queen Elizabeth. Without going into the details of the fortunes of the East India Company, it is enough to state that during this period the Company was essentially a trading corporation, enjoying mercantile privileges of trade with the East Indies.

Owing to the capture of Constantinople by the

<sup>1</sup>*Imperial Gazetteer*, vol. IV, page 5.

Turks, the nations of Western Europe were compelled to resort to the sea route to the East. Their spirit of adventure helped them. Vasco da Gama landed in Calicut in 1498 and within a short time the Portuguese Empire was founded in the East. In course of time Portugal became dominated by Spain. The monopoly of Portugal and Spain was soon challenged by England and Holland. In England the spirit of adventure and colonization was in the ascendant during the sixteenth century. Holland and Spain were at war for a number of years and it became difficult for Portugal and Spain to retain their monopoly of the Eastern trade. In course of time Holland and England also came into conflict in the field of Eastern trade. As the position of the individual traders in this competition became precarious, the Chartered Companies came into existence. Queen Elizabeth granted a Charter to certain London merchants in 1600 for trading purposes in the East Indies. In return for these privileges of trade monopoly the East India Company paid the Crown a share of its profits.

The Charter granted by Queen Elizabeth was renewed from time to time by the English sovereigns and after 1688 by Acts of Parliament. The Government of England had neither a direct share nor responsibility in the affairs of the Company. The qualifications for the Proprietors was the possession of £500 stock and upwards, and for the Directors £2,000 stock. The Directors were elected annually by the Proprietors. The Company's settlers were responsible only to the Directors. The Company had also under that Charter the right "to acquire territory, fortify their stations, defend their property by armed force, coin money and administer justice

within their own settlements." In the exercise of this right the Company acquired a few trading stations. The first of these was at Surat, where the Company obtained some concessions from the Emperor Jehangir. It built factories, mostly on or near the coasts. In 1616 the Company opened a factory at Muslimpattam, and in 1640 Fort St. George was built at Madras on land acquired from an Indian ruler. A factory was also built on the Hoogly and was moved to Calcutta in 1699. In 1662 the King of Portugal handed over the island of Bombay as a dowry to Charles II, who granted it to the Company a few years later.

With the death of Aurangzeb in 1707 the authority of the Mogul Empire was undermined. The provincial governors or *subas* became virtually independent. After the battle of Panipat, in 1761, the mighty Mogul Empire was practically dissolved, and a vacuum was created in the political field. There was no strong central power to arrest the process of disintegration. The English took advantage of the political conditions in India, and the European situation helped them in defeating and ousting their European rivals—the Dutch and the French—from India. At one time the French had almost established their rule in India, but the victories of Clive turned the scale in favour of the English. Clive's tactics and British control of the sea and the short-sighted policy of the French Government proved fatal to the original plans and ambitions of Dupleix. Thus the English were in the ascendant.

After the battle of Plassey the cession of Burdwan, Midnapore and Chittagong to the Company by the Nawab of Bengal in 1760 made the Company masters

of a large tract of territory and compelled them to assume the task of reorganizing the administration of Bengal. This period terminated with the grant of *divani* (the acquisition of powers of revenue collection and civil administration) to the Company by the Mogul Emperor in 1765, when the Company became virtually the rulers of Bengal, Bihar and Orissa.

#### GRADUAL TRANSFORMATION OF THE EAST INDIA COMPANY INTO A POLITICAL ORGANIZATION : THE SECOND PERIOD (1765 TO 1858)

The second period (1765-1858) witnessed the transformation of the Company from a trading corporation into a political body. The Company openly assumed the role of a territorial sovereign under delegated authority, sharing its sovereignty in diminishing proportion with the British Crown and gradually losing its mercantile privileges and functions and finally seeing its own extinction. It is during this period that we see the beginnings and growth of administrative and legislative machinery for British India.

By 1772 the Company had already become, under the pressure of circumstances, a territorial potentate. Strangely enough, while its agents were handling the revenues of a kingdom in the name of the Mogul Emperor, it found itself in financial difficulties. The opulence and arrogance of the servants of the Company returning to England from India directed the attention of the English to their responsibility for the governance of the country. The clauses of the Charters were inadequate to meet the new situation. Accordingly in 1773 the British Parliament "first undertook the responsibility of legislating for India," which was given effect in Lord North's Act.



Lord North's Act, known as the Regulating Act, recognized the authority of the Company to carry on hostilities and make treaties with powers in India. THE REGULATING ACT, 1773. It reconstituted the Council of Bengal, changed the title of Governor to Governor-General, and subjected the other two Presidencies of Bombay and Madras to that of Bengal in matters of the declaration of war and the making of peace. (Till 1773 the settlements at Bombay and Madras were governed by a President or a Governor and a Council.) The first Governor-General (Warren Hastings) and his Council of four members were named in the Act; thereafter they were to be appointed by the Court of Directors. The power of making rules, ordinances and regulations was conferred upon the Governor-General and Council. A Supreme Court of Judicature, comprising a Chief Justice and four puisne Judges nominated by the British Crown, was established for Bengal. The Court of Directors was required to communicate to the Treasury all despatches from India relating to revenue, and all despatches relating to public affairs to a Secretary of State. Before this Act the three Presidencies of Bombay, Madras and Bengal were independent of one another.

This Act has been criticized with some force as violating the first principle of administrative mechanics. It was based on the theory of checks and balances, hence in its actual working it broke down. "It created a Governor-General who was powerless before his own Council and an Executive that was powerless before the Supreme Court."

When by 1782 the Company emerged from the wars with native and European powers as the strongest

power in India, the British Parliament resolved to strengthen its control over the Government of India. On the report of the Committee which was specially appointed to enquire into the affairs of the Company, Warren Hastings (the Governor-General) was recalled. The Directors of the Company defied Parliament and retained Warren Hastings, with the result that, in 1783, Fox introduced his India Bill, which, in substance,

transferred the authority belonging to the Court of Directors

FOX'S INDIA BILL.

for a term of four years to a new body named in the Bill, which was afterwards to be appointed by the Crown. This Bill passed the House of Commons by a majority of two to one, but was rejected by the House of Lords, chiefly through the intervention of George III. For the first and last time a British Ministry was wrecked on an Indian issue. Pitt, who became Prime Minister in 1783, introduced his own

famous Bill, and it was passed by both Houses of Parliament.

PITT'S INDIA ACT, 1784.

This measure, known as Pitt's India Act, 1784, reformed the constitution of the Government of India. Its effect was two-fold. Firstly, it constituted a department of state in England under the official style of "Commissioners for the Affairs of India," generally known as the Board of Control, whose special function was to control the policy of the Court of Directors, thus introducing the dual system of government by the Company and by a Parliamentary Board which lasted till 1858. Secondly, it reduced the number of members of the Council of Bengal to three, of whom the Commander-in-Chief was to be one. It also modelled the Councils at Madras and Bombay on the pattern of that of Bengal.

The Board, as modified by a subsequent Act, consisted of five members of the Privy Council, among whom were the two Secretaries of State and the Chancellor of the Exchequer. The first Commissioner named was appointed President of the Board and was given a casting vote. This made him practically supreme. The first President was Henry Dundas, a friend of Pitt, who held office from 1784 to 1801. The Act empowered the Board, if it considered the subject-matter of its deliberations concerning the declaration of war or the making of peace or negotiating with any of the native princes in India required secrecy, to send orders and instructions to the Secret Committee of the Court of Directors. The Governor-General and Council were prohibited (except in certain cases), without the express consent of the Secret Committee of the Court of Directors, either to declare war or to commence hostilities or to enter into any treaty for making war against any of the countries, provinces or states in India or signing any treaties or guaranteeing possession of any country, province or state. In short, it enjoined upon the Governor-General and Council a policy of non-intervention.

By the Charter Act of 1793, the monopoly of the Company for exclusive trade in the East was renewed for twenty years. This Act

THE CHARTER ACT, 1793.

also introduced some changes in the constitution of the Government of India. The Court of Directors appointed a Secret Committee of their own members through whom the Board of Control was to issue instructions to the Governors in India regarding questions of peace and war. The Councils at Bengal, Madras and Bombay were remodelled. The appointments of the Governors and

the Commander-in-Chief were vested in the Court of Directors subject to the approval of the Crown. The Directors retained their power of dismissing any of these officials. The Governor-General was empowered to override the majority of his Council "in cases of high importance and essentially affecting the public interests and welfare" or "when any measures shall be proposed whereby the interests of the Company or the safety and tranquillity of the British possessions in India may in the judgment of the Governor-General be essentially concerned." A similar power was conferred upon the Governors of Madras and Bombay. The Governor-General was authorized "to superintend" the subordinate Presidencies in matters of war and signing treaties. All orders were to be expressed and to be made "by the Governor-General and Council." The Governor in Council at Madras first received Legislative powers in 1800 by an Act which also established a Supreme Court of Judicature at Madras with Judges appointed by the British Crown. Bombay obtained legislative powers in 1807 and a Supreme Court of Judicature in 1823.

The Company survived and the Directors still retained great powers of patronage. They also transacted the ordinary business of the Company in England. Before the renewal of its Charter, Parliament generally held an exhaustive enquiry into the affairs of the Company. One such enquiry resulted in the Fifth Report of 1812. The indefinite dominion derived from the Mogul Emperor in the form of *divani* was already overlaid by authority derived from Parliament, and the Charter Act of 1813, while continuing the Company in actual possession of its territories, distinctly asserted



THE CHARTER ACT, 1813. the sovereignty of the British Crown over those territories. The territorial authority of the Company and its monopoly of trade with China were again renewed for twenty years, but the right of trade in India except in tea was thrown open to all British subjects. This Act established the office of a Bishop for India and an arch-deacon for each of the Presidencies. It also authorized the expenditure of a lakh of rupees on education and the encouragement of learning.

"In 1833, when the Charter of the Company was renewed for a further period of twenty years, extensive changes were introduced. The Charter

THE CHARTER ACT, 1833. Act of 1833 declared that the territories in India were held by the Company in trust for His Majesty. Its monopoly of trade with China was withdrawn and the Company ceased altogether to be a mercantile corporation.

It was enacted that no official communication should be sent to India by the Court of Directors until it had first been approved by the Board of Control. The Governor-General of Bengal received the title of "Governor-General of India." His Council was enlarged by the addition of a fourth or extraordinary member who was not entitled to sit or vote except in meetings for making laws and regulations. He was to be appointed by the Directors, subject to the approval of the Crown, from amongst persons not servants of the Company. The first member was Thomas Babington Macaulay. The Governor-General in Council was empowered to make "laws and regulations for the whole of India," and legislative functions were withdrawn from Bombay and Madras. A Law Commission was appointed to draft laws for India.

The Act also directed that all Indian laws and also the reports of the newly constituted Law Commission should be laid before Parliament. A new Presidency was created with its seat at Agra. At the same time the Governor-General was authorized to appoint a member of his Council to be a Deputy-Governor of Bengal. Two new Bishoprics were constituted for Madras and Bombay. It was for the first time enacted that "no native of India shall by reason of his religion, place of birth, descent or colour be disabled from holding any office under the Company."

By this Act the sole legislative power was vested in the Governor-General in Council to the supersession of the powers formerly also enjoyed by Bombay and Madras, thus establishing legislative centralization. The former Act had brought the Presidencies of Bombay and Madras under the general superintendence and control of the Governor-General in Council, thus already creating a sort of administrative centralization. In the enlargement of the Council of the Governor-General, by the addition of an extraordinary member for the purpose of legislation only, we have the beginning of the Indian Legislature.

The Company's Charter expired in 1853. By the Charter Act of 1853 its powers were again renewed but "only until Parliament shall otherwise provide." This Act effected other changes also. Six members of the Court of Directors out of eighteen were henceforth to be appointed by the Crown. The appointment of the ordinary members of the Councils in India, though still made by the Directors, was to be subject to the approval of the Crown. The Commander-in-Chief of the Queen's Army in India was declared

THE CHARTER ACT, 1853.

Commander-in-Chief of the Company's forces. The Council of the Governor-General was again remodelled by the admission of the fourth member as an ordinary member for all purposes, while six special members were added for the purpose of legislation only; namely, one member from each Presidency, the Chief Justice of Bengal, and a puisne Judge of the Supreme Court of Bengal. A Law Commission was appointed in England to consider the reforms proposed by the Indian Law Commissioners. Finally admission to the Civil Service was thrown open to public competition. This Act took away the right of patronage from the Directors. Patronage was henceforth to be exercised under rules made by the Board of Control. By 1853 the President of the Board of Control was its sole member. The supremacy of the President did not mean that the Directors had no real power. The right of initiative was still with them. They were still the repository of knowledge of India and they still exercised a substantial influence upon details of administration.

#### TRANSFER OF AUTHORITY FROM THE COMPANY TO THE BRITISH CROWN (PARLIAMENT): THE THIRD PERIOD (1858 TO 1919)

The revolt of 1857 sealed the fate of the East India Company after a history of 250 years. The Mogul Emperor, accused of complicity in the revolt, was deposed and his nominal sovereignty either passed to, or was assumed by, the British Crown. The Act for the Better Government of India, 1858, transferred the government from the Company to the Crown and vested in the Crown all the territories and

THE GOVERNMENT OF  
INDIA ACT, 1858.

powers of the Company and declared that India should henceforth be governed directly in the name of the Crown by its own servants. It created a new office of Secretary of State for India, to transact the affairs of India in England, and to exercise all the powers formerly exercised either by the Directors or the Board of Control. It also established a Council of India consisting of fifteen members, nine of whom were to be those who had had long and recent service or residence in British India, with the object of providing the Secretary of State with information and advice upon Indian questions. Thus the Crown (Parliament) became *de jure* as well as *de facto* sovereign of India. This fact was further emphasized when the Queen, under an Act passed in 1876, adopted the style of Empress of India.

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## CHAPTER II

### "GROWTH OF THE CONSTITUTION FROM 1858 TO 1947"

From 1858 onwards the Crown (Parliament) exercised its authority and control over the Government of India through the Secretary of State, a member of the British Cabinet. Like other ministers of the Crown he was responsible to the British Parliament for his official acts. Till March 1937, he discharged his functions with the help of the Council of India. He had in general the power of overriding his Council, except for certain matters on which a vote of the majority in the Council was necessary. The Governor-General in council had to obey all orders received from Secretary of State in Council. Thus in theory Parliamentary control over India was complete, but in fact it was rarely exercised. After the fall of the Coalition Ministry in 1783 Indian affairs were kept outside British party politics. During the whole period from 1858 to 1919, the interest of Parliament in Indian affairs was neither well sustained nor well informed. In fact Parliament, though a direct guardian, proved only a sleepy guardian of Indian interests. During this period the Government of India was controlled by the Secretary of State in the name of Parliament, but its policy and acts remained generally unscrutinized and uncontrolled by Parliament except in a few cases in which England was primarily interested.

The structure of the "Home" Government of India in England introduced in 1858 continued without any modification till 1919. The size of the India

Council was changed from time to time, but its functions remained the same. At times its role was reactionary. The Government of India Act, 1919, effected certain changes in the structure of the Government of India in England with a view to carrying out the policy contained in the Declaration of August 20, 1917. These changes were merely consequential. The basic principle of parliamentary responsibility for Indian affairs was not touched. With a view to stimulating the interest of Parliament in Indian affairs, the salary of the Secretary of State and the cost of his political establishment at the India Office were transferred to the British Exchequer. He was authorized to relax his powers over Indian administration by rules in certain specified matters. A new post of High Commissioner for India, to do agency work, was created. The composition of the India Council was also modified. These were incidental changes. The position of the Secretary of State and the Council of India in relation to the government of India remained unaffected. On the contrary, the responsibility of Parliament "for the welfare and advancement of the Indian peoples" was emphasized in the preamble to the Act of 1919.

The administrative machinery in India was not substantially modified after 1858, but the legislative machinery was improved and enlarged. Until 1858 the legislatures were merely enlarged committees of the Executives. The Indian Councils Act of 1861 enlarged the Governor-General's Council for the purpose of legislation, but its activity was strictly confined to legislation. The provincial governments were also enlarged. The Indian Councils Act of 1893 further enlarged the Central and Provincial

legislatures both in their compositions and functions. The Morley-Minto Reforms, 1909, further enlarged the Central and provincial legislatures. Their functions were also widened. The members were given powers to ask supplementary questions, to move resolutions, to discuss the budget and divide the House. Thus, between 1861 and 1909, steps were taken to secure the co-operation and consultation of the nominated representatives of the people. All these steps were necessitated by the growing political consciousness of the people. It is to be noted that the legislatures were, during this period, merely committees of the Executives for the purpose of law-making. There was no definite intention of introducing Parliamentary Government in India, though it is true that all these measures, from 1861 onwards, facilitated the introduction of responsible government.

India's demand for political advance was not adequately met by the Morley-Minto Reforms. It was renewed with emphasis during the war of 1914-18. With a view to meeting India's demands and in recognition of India's services to the United Kingdom during the war, on August 20, 1917, Mr. Montagu, the Secretary of State for India, made an announcement to the House of Commons of the policy of His Majesty's Government towards India in the following terms:—

“The policy of His Majesty's Government, with which the Government of India are in complete accord, is that of the increasing association of Indians in every branch of the administration and the gradual development of self-governing institutions with a view to the progressive realization of responsible government in India as an integral part of the British Empire.

DECLARATION OF  
AUGUST 20, 1917.

They have decided that substantial steps in this direction should be taken as soon as possible, and that it is of the highest importance as a preliminary to considering what these steps should be that there should be a free and informal exchange of opinion between those in authority at home and in India. His Majesty's Government have accordingly decided, with His Majesty's approval, that I should accept the Viceroy's invitation to proceed to India to discuss these matters with the Viceroy and the Government of India, to consider with the Viceroy the views of local governments, and to receive with him the suggestions of representative bodies and others.

"I would add that progress in this policy can only be achieved by successive stages. The British Government and the Government of India, on whom the responsibility lies for the welfare and advancement of the Indian peoples, must be the judges of the time and measure of each advance, and they must be guided by the co-operation received from those upon whom new opportunities of service will thus be conferred and by the extent to which it is found that confidence can be reposed in their sense of responsibility."

#### PROGRESS TOWARDS RESPONSIBLE GOVERNMENT: THE FOURTH PERIOD (1920 TO 1947)

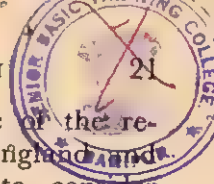
Mr. Montagu came to India, and toured the whole country in the company of the Viceroy, Lord Chelmsford. After ascertaining Indian public opinion they made their report. On their report Parliament passed the Government of India Act, 1919, which gave effect to the policy contained in the Declaration of August 20, 1917. By this Act Dyarchy was introduced in the Provinces. In the transferred departments in the



Provinces the control of the Secretary of State for India was relaxed, and to the extent to which it was relaxed it was transferred to Ministers who were appointed by the Governors from the elected members of the Legislature. However, no changes were introduced in the Central Government.

India was not at all satisfied with the reforms embodied in the Act of 1919. They were denounced by the Indian National Congress as unsatisfactory and unacceptable. The first elections under the Act were boycotted by the Congress. The unsatisfactory character and imperfect operation of the reforms brought into existence a strong and well-organized political movement under the auspices of the Indian National Congress guided by Mahatma Gandhi. The political aspirations of India grew rapidly and the National Congress made a demand for complete independence in 1927. An all-party conference drew up a constitution based on complete autonomy, not necessarily outside the Empire. The insistent demand for political advance secured the appointment, earlier than provided in the Act of 1919, of the Statutory Commission to report on the working of the reforms, under the chairmanship of Sir John Simon. This Commission was boycotted by Indians, as no Indian had been appointed as a member of it. In 1930 Gandhiji launched his Civil Disobedience Movement with the object, *inter alia*, of achieving political freedom. The Simon Commission presented its Report in 1930.

Owing to the rapid progress of political events in India, the report of the Simon Commission was not considered on its merits and the British Government summoned



in England a Round Table Conference of the representatives of the different parties in England and in India, and of the Indian Princes, to consider the question of an Indian Constitution. There were three sessions of this Conference, the third being held in 1932. In March 1933, the British Government issued a White Paper containing the proposals for a new Constitution for India. These included an all-India Federation—a Union between Governors' autonomous Provinces, Chief Commissioners' Provinces, and those Indian States whose rulers signified their desire to accede to the Federation by a formal Instrument of Accession. The schemes were considered by a Joint Select Committee and it was on the report of this Committee that the Government of India Act, 1935, was passed. The Provincial part of the Act came into force on April 1, 1937, but the Federal part never came into force.

From April 1, 1937, responsible Government began to function in the Provinces, which were units of a Federation, but the Central Government was neither responsible nor removable. The reforms were

PROGRESS TOWARDS  
INDEPENDENCE.

inadequate to gratify India's intense desire for complete independence as expressed through a national movement which was daily increasing in power. The Second World War gave a further impetus to this movement. India's claim to independence and the right to decide her future Constitution was definitely recognized by the British Parliament on March 15, 1946, when a Cabinet Mission was sent to India. The Mission laid down the basic form of the Constitution of the Union of India, comprising both British India and the Indian States, and also pro-

vidua for the setting-up of a Constituent Assembly, which was to draw up the Constitution. After the Constituent Assembly had been set up, relations between the Hindus and the Muslims became embittered and the Muslims refused to co-operate with the Hindus in its work. As a result of the strained relations between the two communities, it was decided to partition India, "though her partition was not inevitable," and to set up two independent Dominions of India and Pakistan, and this was done by the Indian Independence Act, 1947. India thus achieved her independence by her own efforts, aided by political movements both in India and abroad. On August 15, 1947, India became an independent Dominion with a right to draw up her own Constitution and to decide whether or not she could remain a member of the British Commonwealth of Nations. The period of British power in India thus came to an end.

Under the Indian Independence Act, the suzerainty of the British Crown over the Indian States lapsed. These States acceded to the Dominion of India, at first as regards three subjects only, but ultimately accepted the Constitution of Part A States embodied in the Constitution drawn up by the Constituent Assembly. Under this Constitution, which came into force on January 26, 1950, India became a Democratic Republic, which comprises the British India Provinces as well as the Indian States, except the territory comprised in Pakistan.

From this rapid historical survey, it is clear that until 1858 the administrative machinery was meant to govern British India without any consultation or co-operation of the people of India. After 1858 the Executive remained entirely responsible to the Bri-

tish Parliament. In governing the country, it tried to acquaint itself with public feeling with a view to making its measures effective. In its nature it was a benevolent despotism tempered by the public opinion and haphazard interest of a remote democracy and at times influenced by public opinion in India. It is not untrue to say that until 1919 the Executive remained supreme and independent both of the Legislature and of the public. To quote the Montford Report: "The announcement of August 20, 1917, marks the end of one epoch, and the beginning of the new one. Hitherto we (Englishmen), have ruled India by a system of absolute government; but have given her people an increasing share in the administration of the country and increasing opportunities of influencing and criticizing the Government." The process of introducing responsible government in the Provinces, which began under the Act of 1919, was completed under the Act of 1935, but the refusal to introduce responsible government at the Centre resulted in the demand for independence. Under the pressure of political events, the British Parliament had to grant India's demands by the Indian Independence Act, 1947.

**Part II**  
**EVOLUTION OF THE SYSTEM OF GOVERN-  
MENT FROM 1858 TO 1947**

**CHAPTER I**

**THE SECRETARY OF STATE FOR INDIA  
AND HIS COUNCIL**

After the revolt of 1857, the Act for the Better Government of India, 1858, transferred the Government of India from the Company to the British Crown and vested in the Crown all the territories and powers of the Company. This Act created a new office of Secretary of State for India, to transact the affairs of India in England, and to exercise all powers formerly exercised either by the Court of Directors or the Board of Control. It also established a Council of India, consisting of fifteen members, with the object of providing the Secretary of State with information and advice on Indian questions.

**THE SECRETARY OF STATE FOR INDIA**

The Secretary of State for India, a member of the British Cabinet, was the immediate agent of the British Parliament for the discharge of its responsibilities in Indian affairs. It was through him that Parliament maintained its control over the Government of India and kept itself informed of everything that concerned its responsibilities in that regard. The Government of India Act, 1919, prescribed his powers and defined the region within which he was responsible to Parliament. He was authorized to superintend,



direct and control, all acts, operations and concerns which related to the Government or revenues of India. The Governor-General, and, through him, the Provincial Governments were required to pay due obedience to his orders. He was the constitutional adviser of the Crown in matters relating to India. All official communications and orders were signed by him. It was on his advice that all appointments by the Crown were made and he had the power of dismissal.

### THE COUNCIL OF INDIA

Till March 1937 the Council of India conducted, under the directions of the Secretary of State, the business transacted in the United Kingdom in relation to the Government of India and the correspondence with India. The Council was a consultative body with a limited veto and without the power of initiative. Its constitution was altered from time to time. Special care was taken to appoint at least half of its members from amongst those who had long residence or service in India and who had left India only recently. Vacancies in the Council were filled by the Secretary of State. Each member received an annual salary of £1200. An Indian member received an extra allowance of £600 a year. In 1936 the Council consisted of eight to twelve members who were appointed for a term of five years. They were not and could not be members of Parliament. A member was removable from office only on an address of both Houses of Parliament. The questions which required the concurrence of a majority vote at a meeting of the Council were (1) grants or appropriations of any part of the revenues of India (2) the making of contracts for the purpose of Government (3)

the making of rules regulating matters connected with the Civil Service. Outside this field the Secretary of State had full power to decide matters according to his own opinion. Since 1907 two members of the Council had been Indians.

The salary of the Secretary of State and the expenditure of his office were not till 1919 included in the annual estimates voted by the House of Commons but were paid from Indian revenues. A detailed account of receipts and charges both in India and in England was annually laid before Parliament, together with a report on the moral and material progress of the people of India. Thus in theory Parliamentary control over Indian affairs was complete, but in fact it was hardly real. As has been stated earlier, after the fall of the Coalition Ministry in 1783, Indian affairs were kept outside British party politics. As the salary of the Secretary of State was not voted by the House of Commons, Parliament had little occasion to take an active interest in them. The policy and actions of the Government of India generally remained unnoticed and uncontrolled by Parliament except in a few cases in which the United Kingdom was primarily interested.

#### CHANGES INTRODUCED BY THE ACT OF 1919.

The Declaration of August 20, 1917, stated that the ultimate goal of British rule in India was the progressive realization of responsible government as an integral part of the British Empire. But it was not possible to relax Parliamentary control over British India. It was also thought that no step could be taken towards responsible government at the Centre. The policy was, therefore, given effect in the Provinces,

where partial responsibility was introduced, and consequential changes were introduced both in the Central and the "Home" Government of India.

By the Act of 1919 the salary of the Secretary of State and the expenses of his political establishment were transferred to the British Exchequer. A joint committee of both Houses of Parliament was appointed to study Indian questions and to help Parliament. Provision was made for the publication in England, at a moderate price, of a handy Report on the moral and material progress of India, to encourage the British democracy to take an interest in Indian questions. The Act provided for the appointment of a Statutory Commission at the end of ten years to examine the working of the reforms with a view to either extending them or withdrawing them. Thus Parliamentary control was strengthened over British India.

To the extent to which partial responsibility was introduced in the Provinces and certain departments were transferred to Ministers, the control of the Secretary of State was relaxed. He was given power to regulate and restrict his authority over the Government of India by rules approved by both Houses of Parliament. Under the rules, in purely provincial matters which were reserved and on which the Provincial Government and Legislature were in agreement, it was understood that their view should ordinarily be allowed to prevail. Over transferred subjects the control of the Governor-General and that of the Secretary of State was restricted within the narrowest possible limits.

#### HIGH COMMISSIONER FOR INDIA

With the object of relieving the Secretary of State

of agency work, a new post of High Commissioner for India in London was created. He was appointed by the Government of India, was paid from Indian revenues, and was primarily responsible to the Government of India. It was understood that in fiscal matters, when the Government of India and Central Legislature were in agreement, the Secretary of State should avoid interference except to safeguard Imperial obligations or arrangements within the Empire to which the British Government was a party.

The Act of 1919 modified the composition of the Council of India. It also modified the qualifications of its members. It shortened the period of service in order to ensure a continuous flow of fresh experience from India.

Thus, paradoxically, the Government of India Act, 1919, at once strengthened and relaxed Parliamentary control over British India.

#### GOVERNMENT OF INDIA IN ENGLAND UNDER THE ACT OF 1935

Under the Act of 1935 the authority of the Secretary of State in Council over India was vested in the Crown and was exercised on the advice of the Secretary of State, who was a member of the British Cabinet. The Prime Minister of Great Britain had the right to select the Governor-General, and he was to be consulted as regards other higher appointments.

The Council of India was abolished as from April 1, 1937. However, in order to provide the Secretary of State with expert guidance on Indian questions, he was aided by advisers with special duties in certain cases. The advisers were not less than three or more than six, of whom half at least were men who had served for ten

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years in India and were appointed within two years of ceasing to work there. The Secretary of State had power to remove any adviser on the ground of infirmity of mind or body. Every adviser received a salary of £1350 per year. An adviser with Indian domicile received an extra allowance of £600. The Secretary of State was at liberty to consult them individually or collectively or not at all. Except in certain specified matters, he might act or refuse to act according to their advice. The advisers could not be members of either House of Parliament. Parliament provided money for the salaries of the Secretary of State and his advisers and for the expenses of his department. His staff was placed on the same footing as other British civil servants.

Under the Constitution Act of 1935 the responsibility of Parliament for the Government of India remained undiminished. It was discharged through the Secretary of State for India. To the extent to which full provincial autonomy was introduced in the Provinces, and to the extent to which partial responsibility was introduced at the Centre, the control and authority of the Secretary of State were relaxed. But in matters which were reserved to the Governor-General, and in matters for which the Governor-General and the Governors had special responsibility, and in which they had to act either in their discretion or in their individual judgment, the Governor-General and the Governors were subject and responsible to the Secretary of State.

Under the Indian Independence Act, 1947, India became an independent Dominion. This necessitated the abolition of the office of the Secretary of State for India, and matters relating to India, like



matters relating to other Dominions, were transferred to the Secretary of State for the Dominions. As a result of the provisions of the Act by which power was transferred from the British Parliament to the Constituent Assembly of India, the control of the Crown (through Parliament) over Indian affairs came to an end, and India became a member of the Commonwealth like other Dominions, in practice enjoying full political freedom.

On January 26, 1950, when the Constitution of India came into force, India became an Independent Democratic Republic. She remained, however, by an understanding, a member of the Commonwealth of Nations. India recognizes the Sovereign only as a symbolic head of the Commonwealth of Nations. India's association with other members of the Commonwealth is on a basis of mutual benefit and advantage.

Like other Dominions, India is represented in England by a High Commissioner.

## CHAPTER II

### GROWTH OF THE CENTRAL EXECUTIVE

Each of the three settlements of the East India Company at Calcutta, Bombay and Madras was

GROWTH OF REPRESENTATIVE GOVERNMENT AT THE CENTRE.

from the beginning administered by a President or Governor and a Council. The three

Presidencies were independent of each other and each government was absolute within its limits, subject to the distant and intermittent control of the Court of Directors. As the need for a common policy for all settlements was soon felt, it was decided to create one supreme government in the country. The grant of the *divani* by the Mogul Emperor to the East India Company in 1765, made Bengal the predominant Presidency, and the Regulating Act of 1773 converted its Governor and Council into a Governor-General and Council and gave him superintending authority over Bombay and Madras, though this was more effective in theory than in fact. Under this Act the Council had three members in addition to the Governor-General. The Charter Act of 1833 made the Governor-General of Bengal the Governor-General of India. His control over the other Presidencies was made complete and effective. A fourth member, being the Law member, was added to the Executive Council for the purpose of legislation only. The Charter Act of 1853 made the Law Member an ordinary member of the Executive Council. In 1861, a fifth member, being the Finance Member, was added to the Council. A member for Public Works was added in 1874 and converted

in 1904 into a member for Commerce and Industry. In 1911 a member for Education was added. The Governor-General in Council constituted the Central Executive.

The Central Government or the Central Executive authority, under the Government of India Act, 1919, both in civil and military matters was the Governor-General in Council.

CENTRAL EXECUTIVE  
UNDER THE GOVERNMENT  
OF INDIA ACT, 1919.

### THE GOVERNOR-GENERAL

The Governor-General was appointed by the Crown on the advice of the Prime Minister, from amongst the most prominent public men in Great Britain, for a period of five years, during which he was entitled to a leave of absence once only and for not more than four months. His salary was Rs. 2,56,000 per year. He took a direct personal part in the work of the Government.

In general he carried out his functions with the guidance and concurrence of his Executive Council, but he had the right to override it in certain circumstances. He could dissolve either Chamber of Legislature. If in special circumstances he thought fit, he could extend the life of the Legislature. He could secure the passing of legislation rejected by either or both Chambers by certifying that its passing was "essential for the safety, tranquillity or interest of British India." With the assent of his Council he could restore grants refused by the Assembly. He could on his sole initiative authorize such emergency expenditure as he thought necessary for the safety or tranquillity of British

HIS POWERS AND RES-  
PONSIBILITIES.

India. He could withhold his assent to any Bill or reserve such a Bill for His Majesty's pleasure. Further he had power in emergency, without consulting the Legislature, to legislate by ordinances, having effect for not more than six months. His previous sanction was required for the introduction of certain classes of Bills in the Central Legislature. He decided what items in the Central expenditure fell within the non-votable category. He nominated a number of official and non-official members to the Central Legislature. He was in constant communication with the Governors of the Provinces, and no new policy of any vital importance was adopted by them without consultation with, and the general concurrence of, the Governor-General.

He was also the Viceroy. He exercised the delegated prerogative rights of the Crown. He had direct personal charge of the relations of India with foreign countries and of British India with the Indian States. All decisions of importance in connection with the Indian States, though issued in the name of the Government of India, were really a special concern of the Viceroy. The Viceroy was the link between British India and the Indian Princes.

The Governor-General, who was responsible to Parliament through the Secretary of State for India, was at all times in intimate relations and consultation with the Secretary of State for India, who had been a member of the British Cabinet. He kept him fully informed of Indian events through regular correspondence by letters, cables and radio. The Governor-General in Council had to pay due obedience to all such orders as he might receive from the Secretary of State in Council, who had control over Indian finance, legis-

HIS RESPONSIBILITIES TO  
THE SECRETARY OF STATE.

lation and administration: Thus Parliament secured and exercised its supervision over British India through the Secretary of State.

There was no other political functionary in the world who had such powers and privileges as the Governor-General of India. As the federal part of the Government of India Act, 1935, did not come into force, his position continued to be as described above till August 15, 1947.

There was no limit to the number of members of the Executive Council. The departments relating to the whole sphere of the Central Government were distributed amongst its members, each of whom was in charge of one or more departments. The most important departments, which were in charge of separate members, were External Affairs, the War Department, Home Department, Finance Department, Department of Railways and the Department of Education, Health and Lands. With the growth of the activity of the Government, a number of departments were increased and the number of members was also increased. The Governor-General himself held the portfolio of the Foreign and Political Department (External Affairs). The Commander-in-Chief controlled army headquarters and was in charge of the army.

The members of the Council were appointed by the Crown on the advice of the Secretary of State, acting in practice on the recommendation of the Governor-General. Three of them were to be persons who had been in the service of the Crown in India for at least ten years. The others were invariably senior members of the Indian Civil Service. The Law Mem-

THE GOVERNOR-GENERAL'S  
EXECUTIVE COUNCIL.



ber was to be a barrister of England or Ireland or an advocate of the Faculty of Advocates in Scotland or a pleader of Indian High Courts of at least ten years' standing. Every member of the Executive Council was a member of one or other Chamber of the Central Legislature and had the right of attending and addressing the Chamber to which he did not belong, though he could not be a member of both. They were appointed for a term of five years. Their salaries were fixed and were not subject to the vote of the Legislature.

The Governor-General presided at the meetings of his Council. In his absence the member whom he had appointed as vice-president presided.

#### MEETINGS OF THE COUNCIL.

All orders were signed by the Secretary to the Government of India. In case of a difference of opinion, the decision of the majority was binding, and in case of equality of votes the Governor-General or other person presiding had a second or a casting vote. But if the proposed measure was in conflict with the view of the Governor-General as to what was essential for the safety, tranquillity or interest of British India, he might on his own authority and responsibility overrule the decision of the Council. In such a case any two members of the dissentient majority were entitled to ask that the matter be reported to the Secretary of State. Ordinary matters were disposed of by different departments, but all important decisions of the Government of India were made by the Council, which met at short intervals.

When the Constitution Act of 1935 was passed it was expected that the Federal part setting up the federal Executive and Legislature for India would come into force within a short time after the

Provincial part had come into force. For the traditional period, the Central Executive as constituted under the Act of 1919 was continued. As the Federal part had never come into operation, the Central Executive so constituted continued to function till August 15, 1947. The only alteration which was made was in the expansion of the Executive Council, which in 1938 consisted of seven members in addition to the Governor-General, to sixteen members, including the Governor-General in 1944, as new departments were created during the war to meet the increasing activities of the Government.

The Central Executive under the Government of India Act, 1935, was dyarchical with an element of responsibility for certain matters, but as this Executive never came into operation it will be enough to describe it briefly at the end of this chapter.

Up to August 15, 1947, the Central Executive was neither removable nor responsible to the Legislature. It was on an entirely different footing from the British Cabinet. There was no collective or joint responsibility amongst the members of the Executive Council. It was responsible to the Secretary of State and to the British Parliament. Having regard to the powers of the Governor-General in Council to restore rejected items of expenditure in certain cases, the powers of certification of Bills by the Governor-General, and also his powers to issue ordinances, it is not too much to say that the Central Executive was all-powerful and practically independent of the Legislature. This independence was secured by the various provisions already mentioned. The Legislature, however, could and did exercise influence upon policy in a marked and increasing degree.

Under the Indian Independence Act of 1947, the Governor-General became the constitutional head of the Dominion, occupying the same position as the Governors-General of other Dominions, and his Executive Council was replaced by a Council of Ministers to aid and advise him in discharge of his functions. In other words, the Central Executive became a parliamentary or responsible Executive.

From this rapid historical survey of the evolution of the Central Executive, it is clear that there was a progressive introduction of a representative element up to 1947 when it became a responsible Executive. The Central Executive which came into existence under the Indian Independence Act of 1947 continued to function till January 26, 1950, when the Constitution came into force.

#### THE FEDERAL OR CENTRAL EXECUTIVE UNDER THE CONSTITUTION ACT OF 1935

To complete the study of the growth of the Central Executive it is desirable to set out briefly the relevant provisions regarding the Federal Executive under the Constitution Act of 1935, though that part of the Act never came into operation.

The Governor-General was given the executive power of the King. This power extended to all matters in respect of which the Federal Legislature could legislate in British India. But in the federated States it extended only to matters over which the Federation had legislative powers by virtue of the Instruments of Accession of the States. The States were to accede to the Federation as regards subjects which were to be set forth in their respective Instruments of Accession.

## ADMINISTRATION OF FEDERAL AFFAIRS

The exercise of federal authority was in a three-fold manner: firstly, a part of it was to be exercised by the

**COUNCIL OF MINISTERS.**

Governor-General with a Council of Ministers not exceeding ten in number chosen and sworn by him from the members of the Legislature to aid and advise him for the administration of federal subjects other than (1) defence, (2) external-affairs, (3) ecclesiastical affairs, (4) the administration of tribal areas, and (5) matters left by the Act to the Governor-General's discretion. Ministers were to hold office during his discretion. He fixed their salaries, which could not be varied so long as they were in office. Ministers ceased to hold office if for a period of six consecutive months they were not members of one of the Chambers. No court could enquire into the advice given by the Ministers. In every case it rested with the Governor-General to decide whether or not he was required to act in his discretion or to exercise his individual judgment.

Secondly, a part of the federal authority in respect of certain specified subjects which were under the

**THE GOVERNOR-GENERAL'S SPECIAL RESPONSIBILITY IN NON-RESERVED SPHERE.**

Ministers, was exercised by the Governor-General in his individual judgment. In respect of these matters, the Ministers were to advise but the decision rested with him. He was at liberty to act in the manner he thought fit for the fulfilment of his responsibilities even though this might be contrary to the advice of his Ministers.

## SPECIAL RESPONSIBILITIES OF GOVERNOR-GENERAL

The matters in which the Governor-General had special responsibilities were (1) the prevention of any

grave menace to the peace and tranquillity of India or any part thereof, (2) the safeguarding of the financial stability and credit of the Federal Government, (3) the safeguarding of the legitimate interest of the minorities, (4) the securing to the members of the public service of any rights provided for them by the Act and the safeguarding of their legitimate interests, (5) the prevention of commercial discrimination, (6) the prevention of actions which would subject goods of the United Kingdom or of Burmese origin imported into India to discriminatory or penal treatment, (7) the protection of the rights of any Indian State and the rights and dignity of the ruler thereof and (8) any matter which affected the administration of any department under the discretion, judgment and control of the Governor-General.

The Governor-General was charged with special responsibility in these matters because it was apprehended that the Legislature might attempt to deal with them in a manner which might be detrimental to India.

With a view to enabling the Governor-General to discharge his functions regarding financial obligations, provision was made for the appointment of a Financial Adviser and one was appointed in 1937.

Thirdly, the Governor-General himself directed and controlled the administration of the departments of

RESERVED FUNCTIONS OF  
THE GOVERNOR-GENERAL  
AND HIS COUNSELLORS.

Defence, External Affairs, Ecclesiastical Affairs, and the administration of tribal areas. These matters were outside the ministerial sphere, and the Governor-General's responsibility with respect to them was to the Secretary of State. To discharge these functions he was to appoint three counsellors, who were to be members of both Chambers of Legisla-



ture, to represent their department for all purposes, though without a right to vote but with full freedom to take part in any debate in the Législature. In these matters the Governor-General was subject to the Secretary of State, whose orders he was to obey. When responsibility did not rest with the Indian Legislature, it rested with the British Parliament acting through the Secretary of State.

Provision was also made for the appointment of an Advocate-General of India to advise the Federal Government in legal matters. This was carried out in 1937. All executive action of the Federation was to be taken in the name of the Governor-General.

It is clear from this description of the Federal Executive under the Constitution Act of 1935 that it was dyarchical. The Governor-General himself, with the aid of his councillors, controlled the departments of Defence, External and Ecclesiastical Affairs and the administration of tribal areas. Over these matters neither the Ministers nor the Legislature had any effective control. Other departments were transferred to Ministers who were responsible to the Legislature, but even within these departments there were specified matters for which the Governor-General had special responsibility, in discharge of which he was, if he thought fit, to disregard the advice given to him by his Ministers. In other words, the Federal Executive was a very limited responsible Government. The framers of the Constitution Act of 1935 could hardly have dreamt that within less than fifteen years India would become a democratic republic with a form of effective responsible government.

## • CHAPTER III

### • GROWTH OF THE INDIAN LEGISLATURE

The germ of the legislative power of the East India Company lay embedded in Elizabeth's Charter, which authorized the Company to make reasonable laws, orders and ordinances not repugnant to English law for the good government of the Company and its affairs. The Charter Act of 1726 invested the Governors and Councils of the three Presidencies with power to make and ordain bye-laws and rules for the good government of the Company's factories. From 1726 onwards the three Presidency Councils proceeded to make laws independently of one another within their jurisdictions. The Regulating Act of 1773 subordinated the Presidencies and Councils of Madras and Bombay to the Governor-General and Council of Bengal, who were thereby constituted the supreme Government, and required the Madras and Bombay Governments to send to Bengal copies of all their Acts and orders. Thus up to 1833 such legislative powers as were exercisable in India were vested in the executive Governments. This was the period of Bengal, Madras and Bombay "regulations." The origin from which the special Legislative Council may be said

to trace its descent is to be found in the Charter Act of 1833, which aimed deliberately at simplifying the legislative machinery. Under that Act Macaulay was appointed to be the first legislative councillor of the Governor-General's Council. All legislative power in India was

vested in the Governor-General in Council. The Council was increased by the addition of a fourth ordinary member who had no power to sit or vote except at meetings for the purpose of making laws and regulations. The laws made by this body were, subject to their not being disallowed by the Court of Directors, to have effect as Acts of Parliament. Henceforward the laws passed by the Indian Legislature were known as Acts. Further changes were made by the Charter Act of 1853. The Council was doubled in size for legislative

purposes, by the addition of six members—the Chief Justice of Bengal, another Judge, and four Company's servants of twenty years' standing appointed by the Governments of Bengal, Madras, Bombay and the North-West Province. The legislative council thus constituted was intended for purely legislative work.

The Indian Councils Act of 1861 remodelled the legislative council. It provided that in addition to

the members abovementioned the Governor-General might further

nominate such persons, not less than six and not more than twelve, as members of the Council for the purpose of making laws and regulations only, one-half of them being non-official persons. The functions of the legislative council were limited strictly to the consideration and enactment of legislative measures.

The Indian Councils Act of 1893 increased the size of the legislative council. It introduced changes in

the method of nomination and relaxed to some extent the restrictions on its proceedings. The number of members to be nominated for legislative purposes was fixed at ten to fifteen. An official majority was maintained. The

powers of the legislative council were also enlarged by rules under which the members were allowed to take part in the annual discussion of the financial statement and to draw attention to any financial matter they pleased. They were also allowed to ask questions. The activities of the council were, however, strictly limited to legislative business and the asking of questions.

### MORLEY-MINTO REFORMS

As a result of the political agitation resulting from the partition of Bengal and the increasing demand on the part of the people for a share in the Government, the Morley-Minto Reforms were introduced by the Indian Councils Act of 1909. By these Reforms the Indian Legislative Council was enlarged. The number of additional members was fixed at sixty, of whom not more than twenty-four were to be non-officials. The Governor-General nominated three non-officials to represent certain specified communities and filled two other seats by nomination. Representation was given to interests rather than to territories. The twenty-seven elected seats were distributed among certain special constituencies such as the landowners, the Mohammedans, Mohammedan landowners, and two Chambers of Commerce, and the residue of open seats was filled by election by non-official members of the nine Provincial Legislative Councils. Thus the principle of election in an indirect manner was introduced. Communal representation was definitely recognized for the first time. Lord Morley maintained that the Governor-General's Council, in its legislative as well as its executive character, should continue to be

MORLEY-MINTO  
REFORMS, 1909.

so constituted as to ensure its constant and uninterrupted power to fulfil the constitutional obligation that it owed to His Majesty's Government and to the Imperial Parliament.

Changes were also introduced in the functions of the Council. For thirty years between 1862 and 1892 the Council had no other functions than that of legislation. The Act of 1893 gave members power to discuss the budget but not to move resolutions about it or to divide the Council. Lord Morley's Act empowered the Council to discuss the budget at length before it was finally settled, to propose resolutions on it and to divide the House upon them. Members were also allowed to ask supplementary questions. Not only on the budget, but on all matters of general public importance, resolutions might be proposed and divisions taken. The resolutions were, however, only recommendations to the executive government. On certain matters such as those affecting Native States no resolutions could be moved. Any resolution might be disallowed by the Governor-General if it was inconsistent with the public interest.

The Morley-Minto Reforms frankly abandoned the old conception of the Council as a mere Legislative Committee of the Government. They did much to make it serve the purpose of an enquiry into the doings of Government by conceding the very important rights of discussing administrative matters and of cross-examining Government on its replies to questions. Lord Morley publicly denied that the reforms were either directly or indirectly intended to establish the Parliamentary system in India. The Morley-Minto Reforms failed owing to various reasons. Some of the essential conditions of success were absent. The defect of the



electoral system prevented a healthy growth of parties. The official bloc often rendered the opinion of the non-officials ineffective. There were inherent defects in the reforms which did not satisfy the political aspirations of the people. In the words of the Montagu-Chelmsford Report: "The Morley-Minto Reforms, in our view, are the final outcome of the old conception which made the Government of India a benevolent despotism (tempered by a remote and occasionally vigilant democracy) which might as it saw fit for purposes of enlightenment consult the wishes of its subjects. Parliamentary usages have been initiated and adopted in the Councils up to the point where they cause the maximum of friction, but short of that at which by having real sanction behind them they begin to do good . . . Responsibility is the savour of popular government, and that savour the present Councils wholly lack. We are agreed that our first object must be to invest them with it. They must have real work to do; and they must have real people to call them to account for their doing it."

#### THE CENTRAL LEGISLATURE (UNDER THE ACT OF 1919)

To give effect to the Declaration of August 20, 1917, the Government of India Act, 1919, was passed. It introduced a bicameral system of Legislature. As the Legislature was enlarged, both in its composition and functions, it was apprehended that it might use its power rashly and hastily; hence a second Chamber was established.

The Central Legislature consisted of the Governor-General and two Chambers, *viz.*, the Council of State and the Legislative Assembly. In each of these Chambers the majority of members were elected.

## COUNCIL OF STATE

The Council of State consisted of sixty members, of whom thirty-four were elected and twenty-six nominated. Of the nominated members not more than twenty were officials.

The electorate of the Council of State was so framed as to give it a character distinct from that of the Legislative Assembly. Its franchise was extremely restricted. Voters had to possess high property qualifications. Previous experience in a Central or Provincial Legislature, service in the chair of a municipal council, membership of the University Senate, and similar tests of personal standing qualified persons for a vote at its election. Electors were grouped into communal constituencies. Women were not entitled to vote, or to offer themselves for election. Its President was appointed by the Governor-General from amongst its members. It continued for five years.

## LEGISLATIVE ASSEMBLY

The Legislative Assembly consisted of 145 members, 105 of whom were elected, 26 were official members and 14 were nominated non-officials. Among the nominated non-officials were included the sole representative of the depressed classes, the sole representative of the Indian Christians, and the sole representative of the Anglo-Indian community. The 26 officials included most of the members of the Governor-General's Council, other important members of the Government of India Secretariat, or the representatives of the different Provincial Governments. For the first four years of its existence, the President was appointed by the Governor-General, but thereafter

he was elected by its members from amongst themselves and approved by the Governor-General.

The elected members were distributed amongst the Provinces, having regard to their importance. The franchise was on the same lines as for the Provincial Councils, but with somewhat higher electoral qualifications. The Muslims were granted separate representation by the formation of Mohammedan constituencies. Apart from the general constituencies, Mohammedan and Non-Mohammedan and the European seats, there were certain special constituencies for landowners and for Indian Commerce.

Freedom of speech was assured to the members in both Chambers. No person was liable to any proceedings in any Court by reason of his speech or his vote in either Chamber or by reasons of anything contained in any official report of the proceedings of either Chamber.

The Indian Legislature had power to make laws for the whole of British India. No Bill became

law unless it was passed by  
**LEGISLATIVE POWERS.** both Houses and received the assent of the Governor-General. A Bill, except in the case of a financial Bill, originated in either Chamber. Previous sanction of the Governor-General was required for the introduction of any measure affecting the public debt or public revenues of India, or imposing any charge on the revenues of India; affecting the religion or religious rites and usages of any class of British subject; affecting the discipline or maintenance of military, naval or air forces, etc. In certain specified matters the Legislature had no power to make laws.

The members of the Legislature had the right to ask questions and also supplementary questions on

matters of public importance. They had also the right to move motions for adjournment.

### FINANCIAL POWERS

The annual statement of the estimated revenue and expenditure of the Government of India was presented simultaneously in both Chambers, and in both discussion on main principles was permitted.

The annual expenditure of the Government of India was divided between votable and non-votable items. The non-votable items were not to be voted by the Legislature. They comprised interest and sinking fund charges on loans; expenditure prescribed by law; salaries and pensions of the officials appointed by the Secretary of State in Council, Chief Commissioners and Judicial Commissioners, and members of the superior services; and expenditure classified as ecclesiastical, political and defence. Nearly 75 per cent of the total expenditure was excluded from the vote of the Legislature.

As regards votable items, demands for grants were submitted to the Legislative Assembly. The Council of State had no power to vote them.

The Government alone had power to propose an item of expenditure or its increase, and an addition to, or an increase in, taxation. The Finance Bill was subject to discussion in both Houses, but the Assembly alone had the power to grant or withhold supply. If the Legislative Assembly declined to vote the demand put before it, the Governor-General in Council was empowered to sanction it, if it was essential in his opinion for the discharge of his responsibilities.

To ensure general supervision over the finances of the Government of India, a committee of the members

of the Legislative Assembly, called the Standing Finance Committee, was appointed every year. Another committee, called the Committee on Public Accounts, was appointed at the commencement of each financial year, to deal with the audit and appropriation of accounts of the Governor-General in Council. Its work was in the nature of a post-mortem examination of the expenditure.

In the case of failure of either Chamber of the Legislature to pass a Bill regarded as essential, the Governor-General was empowered to enact it by certifying that the Bill was essential for the safety, tranquillity or interest of British India. When he thus certified it, the Act had to be laid before both Houses of the British Parliament and had no effect until it subsequently received His Majesty's assent, but in a case of emergency the Governor-General had power to direct that the Act which he had certified should come into operation forthwith. It was subject to disallowance by His Majesty in Council. In case of emergency the Governor-General had power, without consulting the Legislature, to issue ordinances, which had the force of law for six months.

### RELATION BETWEEN THE TWO HOUSES

Three methods were provided for avoiding or composing differences between the two Chambers. These were joint committees, joint conferences, and joint sittings.

From the account of the Central Legislature under the Act of 1919, it is clear that it had wide powers of legislation, but limited powers in matters of finance, and had no power to control the Executive, though



it had adequate power to influence it. There was no element of responsible government, which could have secured the responsibility of the Executive to the Legislature.

As the Federal part of the Constitution Act of 1935 never came into force, hence the Federal Legislature constituted under the Act of 1919 did not come into existence. (It is dealt with at the end of this Chapter as an element in the growth of the Legislature.) The Central Legislature as constituted under the Act of 1935 continued to function after April 1, 1937, till August 15, 1947. Its life was extended for an additional year on several occasions. It was dissolved at the beginning of 1946. A new election was held in March 1946, and the newly elected Assembly began to function from April 1, 1946. The term of both the Assembly and the Council of State was extended from time to time till August 15, 1947, when the Council of State ceased to exist and the Constituent Assembly, which was set up under the Cabinet Mission plan and which became a statutory body under the Indian Independence Act, 1947, began to function both as the Dominion Legislature and the Constituent Assembly. From August 15, 1947, it had supreme legislative power. On January 26, 1950, when the Constitution came into force, the Constituent Assembly became the provisional Parliament of India.

#### FEDERAL OR CENTRAL LEGISLATURE UNDER THE CONSTITUTION ACT OF 1935

As it never came into existence it is not necessary to study the provisions regarding the Federal Legislature in detail, but they may be briefly noted in order to make the study of the growth of the Legislature complete.

The Federal Legislature consisted of the King represented by the Governor-General and two Chambers—the Council of State and the House of Assembly or the Federal Assembly.

The Council of State was a permanent body. Its members were elected for nine years, one-third of them retiring every third year. The Assembly, unless dissolved earlier, had a maximum duration of five years. Both Chambers were to meet annually. The Governor-General was, in his discretion, to summon and address either Chamber or both, prorogue the Chambers, dissolve the Federal Assembly and send messages on pending Bills or on other matters. Each Chamber elected its own President or Speaker and a Deputy Speaker, who could be removed only by a vote of the majority of all the members passed on fourteen days' notice. The Speaker continued to hold office on dissolution until immediately before the meeting of the new Assembly. The President or the Speaker had a casting vote only. It was his duty to adjourn or suspend the sitting if less than one-sixth of the members were present. The salaries of the President and the Speaker were fixed by the Governor-General. The Ministers' Counsellors of the Governor-General, and the Advocate-General of India had the right to speak in and take part in the proceedings of either Chamber. Ministers could vote only in the Chamber of which they were members. The Counsellors and the Advocate-General had no right to vote.

The Council of State consisted of 260 members, of whom 156 were members of British India and 104 were appointed by the rulers of the States.

COMPOSITION OF THE  
COUNCIL OF STATE.

The members for British India were to be directly elected, with the exception of six to be nominated by the Governor-General so as to secure the representation of the scheduled castes, women and minority communities. There were seventy-five general seats; six for scheduled castes, four for Sikhs, forty-nine for Mohammedans and six for women. There were seven seats for Europeans, two for Indian Christians and one for Anglo-Indians. The territorial seats were distributed amongst the Governors' Provinces.

The said seats were allocated among States with regard to dynastic status, salutes and other factors. The smaller States were given fewer seats. Some States were grouped, and their rulers jointly or in rotation were to send a representative for the group. The States' representatives were appointed by the rulers of the States, who could recall them before the expiry of the period.

The House of Assembly consisted of 375 members, of whom 250 were representatives of British India and not more than 125 were appointed by the rulers of the States which had acceded to the Federation. The 250 seats of British India were distributed as follows: general seats 105, of which nineteen were for the scheduled castes, six for Sikhs, eighty-two for Mohammedans, four for Anglo-Indians, eight for Europeans, eight for Indian Christians, eleven for the representatives of commerce and industry, seven for landholders, ten for the representatives of labour and nine for women.

The said seats were distributed amongst the States in relation to their population, among other things.

To be a member of the Legislature a person was to be

COMPOSITION OF THE  
HOUSE OF ASSEMBLY OR  
FEDERAL ASSEMBLY.

a British subject or a subject of the federated State. For the Council of State he was to be thirty years and for the Federal Assembly twenty-five years of age. Every member had to take an oath or affirmation before he took his seat.

#### MEMBERS AND THEIR QUALIFICATIONS.

The privileges of the members of the Legislature were the same as those under the Constitution Act of 1919. The language to be used in the Federal Legislature was English, but the rules of procedure permitted persons insufficiently familiar or wholly unacquainted with English to use another language. Each Chamber made its own rules of procedure. No discussion was permitted as regards the conduct of a Judge of the Federal Court or of any High Court, including State Courts. The Governor-General was authorized to prevent discussion and further proceedings on a Bill or its amendments, if he considered that the discussion would affect the discharge of his responsibility for the prevention of any grave menace to the peace or tranquillity of India.

#### LEGISLATIVE PROCEDURE

A Bill normally required the assent of both Chambers to become law. Except in the case of a Finance Bill, it might originate in either Chamber. The rest of the legislative procedure was on the same lines as that obtaining under the Constitution Act of 1919.

#### FINANCIAL PROCEDURE

As regards financial matters the Governor-General was required to lay before the Legislature the annual financial statement of the estimated receipts and expenditure, showing separately the sums charged on

the revenues of the Federation and also the sums required to meet other expenditure proposed, to be met from the Federal revenues.

The items of Federal expenditure were of two kinds: (1) non-votable and (2) votable. The non-votable items were items of expenditure which were charged on the revenues of the Federation. There were nine such items, which were similar to those which are in the present Constitution charged on the Consolidated Fund of India. It was open to either Chamber to discuss, but not to vote on, these excluded items. All other items of expenditure were votable and were submitted in the form of demands for grants recommended by the Governor-General. The Government alone had the right to propose expenditure or an increase in expenditure or taxation. In the case of disagreement between the two Chambers, a joint sitting decided the question. The Governor-General authenticated a schedule specifying the grants made by the Chambers and it constituted the authority for expenditure for the year. Nearly seventy-five per cent of the total expenditure was not under the control of the Legislature. The Governor-General alone had the initiative in recommending a Bill concerning taxation and financial matters. Such a Bill could not be introduced in the Council of State. No Bill, if it involved expenditure, could be passed by the Legislature without the Governor-General's recommendation.

#### THE POWER OF THE GOVERNOR-GENERAL TO PROMULGATE ORDINANCES

The Governor-General was given emergency powers as regards legislation. He was authorized to issue an ordinance when the Legislature was not in session,



if he was advised by the Minister concerned that immediate action was necessary. The Governor-General exercised his judgment in doing so. He was not to promulgate, without the King's instructions, any ordinance which, if it had been a Bill, he would have been bound to reserve for the assent of His Majesty. The ordinance was to be laid before the Legislature when it met. It had effect only for six weeks. It could be disallowed by the King, and could be withdrawn at any time by the Governor-General. He was authorized, under similar circumstances, in matters involving his discretion or individual judgment, to issue an ordinance having a duration of six months but capable of being extended for a further period of six months.

Further the Governor-General was authorized under certain circumstances for the discharge of his responsibilities to enact a Governor-General's Act, explaining his action to the Chambers by message,

GOVERNOR-GENERAL'S  
ACTS.

or he could send to the members a draft which was to be enacted into an Act after a month's delay and after taking into consideration any resolution passed by the Chambers. Such an Act was to be laid before both Houses of Parliament, which could disallow it.

The Governor-General was given special powers in case of failure of the constitutional machinery. If he

GOVERNOR-GENERAL'S  
POWERS IN CASE OF  
FAILURE OF CONSTITU-  
TIONAL MACHINERY.

was satisfied that the Government of the Federation could not be carried on under the Act, he was to issue a Proclamation declaring that the functions specified in the Proclamation would be carried on at his discretion and assuming any power exercisable by the Federal authority other than the

powers of the Federal Court. The Proclamation lasted for six months, but by following the prescribed procedure it could be renewed for a period of not more than three years.

## CHAPTER IV

### GROWTH OF THE PROVINCIAL EXECUTIVE

Before 1919, of the fifteen administrative units of British India, the three Presidencies of Bengal, Bombay and Madras were each administered by a Governor with a Council of three members who were usually members of the Indian Civil Service. In emergency the Governor might overrule his colleagues, but otherwise the decisions were those of the majority. These Governorships were held by men whose experience had been in the field of British politics. In four Provinces there were Lieutenant-Governorships, which were held by senior members of the Indian Civil Service. They governed these Provinces either with or without the help of a Council. There were three Provinces which were governed by civilians called Commissioners merely as agents of the Government of India. The remaining units were under the direct control of the Government of India.

The cardinal point which emerges from the examination of the constitutional structure of India before 1919, is the concentration of authority at the Centre. This centralization may be traced back to the Charter Act of 1833. Up to that date the control exercised by the Governor-General in Council of Bengal over the two Presidencies of Madras and Bombay was limited to transactions with Indian potentates and questions affecting war and peace. For the ordinary internal administration of these areas and for the making of laws

to be applied to them the Government of Bengal had, previous to 1833, no responsibility. By the Act of 1833 the Governor-General of Bengal became the Governor-General of India, and his Government was called for the first time the Government of India. Its authority became co-extensive with the area of British possessions in India. The independent legislative powers formerly exercised by the Governments of Madras and Bombay were taken away. Down to 1921 the Governor-General in Council was, within British India, the supreme authority in which was concentrated responsibility for every act of civil as well as of military government throughout the whole area. The Provincial Governments had, of course, most important work to do, for in their hands lay the day-to-day task of administration in the Provinces, but they were virtually in the position of agents of the Government of India. The entire governmental system was in theory one and indivisible. The rigour of the logical application of that conception to administrative practice had gradually been mitigated by the wide delegation of powers and by the customary abstention from interference with the agents of administration. Nothing illustrated more clearly the supremacy of the Centre than the arrangements as to finance. In short, up to 1919, from the administrative, financial and legislative point of view, the concentration of authority at the Centre was a cardinal feature of the Constitution of India. This was one of the features which Parliament in 1919 set itself to modify, as it blocked effectively any substantial advance towards the development of self-governing institutions. The authors of the Montagu-Chelmsford Report stated: "Provinces are the domains in which the earlier steps

towards the progressive realization of responsible government should be taken. Some measure of responsibility should be given at once and our aim is to give complete responsibility as soon as conditions permit." This object was achieved by the introduction of dyarchy, by which partial responsibility was introduced in the Provinces. The intention of the authors of the Reforms of 1919 was to give an independent life to provincial organisms which would in future form the members of a British-India Federation. The Government of India Act of 1935 created an All-India Federation and made the Provinces autonomous units, independent within their own spheres of any central control.

This was done by the introduction of full provincial autonomy, whereby each of the Governors' Provinces possessed an Executive and a Legislature having exclusive authority within the Provinces in

#### WHAT IS PROVINCIAL AUTONOMY?

a precisely defined sphere, broadly free from control by the Central Government and Legislature. This represented a fundamental departure from the scheme under the Act of 1919. Under that Act the Provincial Governments exercised a devolved authority from the Government of India and not an independent authority. Under the Act of 1935 the Provinces exercised independent authority derived directly from the Crown.

Under the Act of 1935 British India consisted of (1) eleven Governors' Provinces, *viz.*, Bengal, Madras, Bombay, the United Provinces, the Punjab, Bihar, the Central Provinces and Berar, Assam, the North-West Frontier Province and the two newly created Provinces of Orissa and Sind; (2) six Commissioners'



Provinces, *viz.*, British Baluchistan, Delhi, Ajmer-Merwara, Coorg, the Islands of Andaman and Nicobar, and the area known as Panth-Piplōda. The Government of India also had jurisdiction over certain tribal areas.

The Executive system introduced in Governors' Provinces under the Act of 1919 was known as Dyarchy. Under it the Provincial subjects (the sphere of Provincial Government) were separated from the Central subjects and divided into transferred subjects and reserved subjects. The first group was administered by the Governor acting with Ministers, and the second by the Governor in Council. The members of the Governor's Council, who did not exceed four, and of whom at least half were Indians, were appointed by His Majesty. One, at least, of the members was a person who had been for not less than twelve years in the service of the Crown in India. The Governor presided at meetings of his Executive Council, where ordinarily the decision of the majority prevailed, though the Governor had authority in case of equality of votes and in certain circumstances the right to overrule his Councillors. The Ministers were chosen by the Governor from the elected members of the Provincial Legislative Council. They were not members of the Executive Council, but for purposes of convenience the Executive Members and the Ministers met regularly under the presidency of the Governor to discuss matters of common interest. But the responsibility for decision rested upon the Governor in Council or the Governor advised by his Ministers, as the case might be, according to the subject. There was a joint purse for both kinds of subjects, but the requirements of the reserved

subjects had priority over those of the transferred subjects. The Governor was required to be guided by the advice of his Ministers in relation to transferred subjects unless he saw sufficient cause to dissent in which case he might require action to be taken otherwise than in accordance with that advice. Ministers held office at the Governor's pleasure, but the financial power of the Legislature gave the latter the means of influencing ministerial policy. The Executive Members, though *ex-officio* members of the Legislature, were independent of it and in practice were appointed for a fixed term of five years. The Provincial Governments were under the general control and superintendence of the Central Government and in certain matters were under its direct control.

This dual or dyarchic system, which was designed to develop a sense of responsibility, was not successful. Apart from giving opportunities to some Indians for training in the system of Parliamentary Government, its working for sixteen years did not produce any substantial results, and the hopes of its authors, Mr. Montagu and Lord Chelmsford, remained unrealized.

Under the Constitution Act, 1935, Provinces were formed into autonomous political units, legally deriving their authority from the Crown. The whole basis of the provincial executive under the Act of 1935 was a fundamental departure from that under the Act of 1919. Dyarchy was abolished and full provincial autonomy was introduced from April 1, 1937.

#### THE PROVINCIAL EXECUTIVE UNDER THE ACT OF 1935

The whole executive authority of the Province was vested in the King and was exercised by

GOVERNOR. his representative, the Governor, appointed under the Sign Manual. His salary was fixed by the Act. His position in the Province was generally similar to that of the Governor-General in the Federation. He had no direct responsibility for the financial stability of the Province, but the Governor-General might require him to act so as to safeguard the stability of federal finance. The executive authority of the Province extended to all matters on which the provincial Legislature had power to legislate.

In the exercise of his functions the Governor had a Council of Ministers to aid and advise him over the whole sphere of the Provincial Government, except in those matters which were left to his discretion. The Governor had the right, in his discretion, to preside at the meetings of the Council of Ministers. He decided whether a particular matter was one in respect of which he was to act in his discretion or in his individual judgment.<sup>1</sup> Ministers, who were members of the Legislature, or who had to become members of the Legislature within a stated period, were appointed and dismissed by him at his discretion. A

<sup>1</sup>The distinction between "the Governor acting in his discretion" and "the Governor acting in his individual judgment" should be clearly noted. When the Governor acted in his discretion it was a case where he acted without being under the obligation of consulting his Ministers at all, and where primarily he acted freely. On the other hand, where he acted in his individual judgment, that was a case where he had to consult his Ministers, but was not obliged to accept their advice, and therefore his final decision might or might not agree with the advice tendered to him by the Ministers. In short, the words "in his discretion" were used in respect of powers and functions outside the ministerial field, and the words "in his individual judgment" were used in respect of powers within the area in which, normally or at ordinary times, the Governor was to act on the advice of his Ministers.

Minister who ceased to be a member for six consecutive months ceased to be a Minister. The Governor fixed their salaries in his discretion, and these could not be varied while Ministers were in office. The Instrument of Instructions directed the Governor to select his Ministers in consultation with the person who, in his judgment, was likely to command the largest following in the Legislature, and to appoint those persons, including so far as possible members of the important minority communities, who were in the best position collectively to command the confidence of the Legislature.

The Governor had special responsibility in respect of (1) the prevention of any menace to the peace or tranquillity of his Province or any part thereof, (2) the safeguarding of the legitimate interests of the minorities, (3) the securing to the members of the public services of any rights under the Act and the safeguarding of their legitimate interests, (4) the securing of protection against discrimination in the sphere of executive action, (5) the securing of the peace and good government of areas declared to be partially excluded areas, (6) the protection of the rights of States and the rights and dignity of any ruler and, (7) the securing of the execution of orders (dealing with administrative relations) lawfully issued by the Governor-General in his discretion. The Governor of the Central Provinces and Berar had the further special responsibility of seeing that a due proportion of revenue was spent on Berar, and the Governor of Sind that of securing the proper administration of the Lloyd Barrage and Canals Scheme. The Governors of Provinces in which there were excluded areas had to secure that no action o

SPECIAL RESPONSIBILITIES  
OF THE GOVERNOR.

theirs in respect of such an area was prejudiced by their other actions. Any Governor who was discharging any functions as agent for the Governor-General had to see that no action was taken which was inconsistent with his duty as an agent. In all such cases in which he was exercising his special powers, or acting in his discretion, the Governor was, after hearing his Ministers' advice, to act in his individual judgment, and in so acting he was subject to the directions of, and was responsible to, the Governor-General acting in his discretion, and through him to the Secretary of State and ultimately to Parliament. The mode of the exercise of his functions as regards his special responsibilities was laid down in the Instrument of Instructions issued to him by the King on his appointment. To ensure that none of his special responsibilities was overlooked, the Governor made rules requiring Ministers and secretaries to transmit to him information as to the business of the Government and to bring to his notice any matter likely to involve his special responsibility.

Under his Instructions the Governor was to encourage all classes of the population to take their proper place in the public life and Government of the Province, to secure minorities a due share of appointments, to prevent measures which would discriminate though not in form discriminatory, and to avoid interference with the rights of the States. The Governor of the Central Provinces and Berar was to have due regard in the administration of Berar to the commercial and economic interests of Hyderabad. The Governors of other Provinces had to keep the Governor-General informed of the position of the civil servants in the Irrigation department. The Governor corresponded with the Governor-General in respect of all questions



affecting the Federation. He was not prevented from having direct relations with the Secretary of State.

The Governor was given special powers in matters of law and order. He appointed in his individual judgment an Advocate-General for his Province, a person qualified to be Judge of a High Court, whose position in the Province was similar to that of the Advocate-General for the Federation.

The Governor exercised his individual judgment as to the making, or amending, of any rules relating to any police force, unless they did not affect its organization or discipline. He had the right in his discretion to authorize an official to speak and take part in the Legislature as his mouthpiece on questions which might affect the peace or tranquillity of the Province. This official had the same powers and rights as an elected member, except the right to vote. The Governor had also the right in his discretion to make rules preventing discussion of information which might affect the security and peace of the Province.

All executive actions of the Provincial Government were expressed in the name of the Governor. All orders and instructions, to acquire validity, were to be duly authenticated according to the rules. The Governor, after consultation with the Ministers, made in his discretion rules for the transaction of the business of the Government. His Instructions required him to secure due consultation of the Finance Minister on all financial matters. He was required to encourage joint responsibility among Ministers and to avoid any action which permitted Ministers to evade their own responsibility by placing the onus on him.

The Governor had his own secretarial staff, appointed by him in his discretion. The salaries and

allowances of the staff were fixed by him and they were charged on the revenue of the Province.

The Provincial Executive under the Act of 1935 was theoretically a responsible Executive. The whole sphere of Provincial Government was entrusted to Ministers appointed by the Governor from the members of the Legislature. Generally speaking, if the parties in the Legislature were organized on broad issues of policy it was possible to evolve responsible government. But the sphere covered by the matters in respect to which the Governor had special responsibilities was so large as to restrict the scope of responsible government. Moreover, the instructions to the Governor to have due regard to the minorities in the selection of Ministers hampered the growth of responsible government, which postulated the homogeneity and collective responsibility of the ministry. However, the existence of an electorate which recognized communal representation and which was rigidly divided into various groups was inconsistent with the elementary principles of responsible government. Again, the special responsibility of the Governor and the safeguards and reservations effectively limited the functioning of responsible government. The Joint Select Committee observed:—"Parliamentary Government, as it is understood in the United Kingdom, works by the interaction of four essential factors: the principle of majority rule; the willingness of the minority for the time being to accept the decisions of the majority; the existence of great political parties divided by broad issues of policy, rather than by sectional interests; and finally the existence of a mobile body of political opinion, owing no permanent allegiance to any party and therefore able, by its instinctive reaction

against extravagant movements on one side or other, to keep the vessel on an even keel.” In India all these factors did not fully exist in 1937. But there was in India both a background and a foreground for creating these factors by suitable machinery, and they were created to a very large extent in the years which followed the introduction of provincial autonomy. The Reforms of 1919 were designed as a first stage in the measured progress towards responsible government in the Provinces. The Government of India Act, 1935, was at best intended to set up a machinery which would facilitate the evolution of responsible government in the Provinces, and to a very large extent the hope of establishing responsible government in the Provinces under that Act was realized.

As a result of the provincial elections held in 1937, the Congress party secured a majority of seats in a large number of Provinces. As certain assurances which it demanded were not forthcoming from the British Government, the Congress party, which had a majority in some Provinces, refused to form ministries. Ultimately an understanding was reached between its leaders and the Governors, and the Congress party accepted office and formed ministries with the object of utilizing a new constitution to strengthen their position in getting the constitution altered. The Congress ministries resigned in 1938. During their period of office they did useful work.

On the outbreak of war in 1939, the Congress ministries demanded a declaration from the British Government about its war aims and its attitude towards the constitutional development of India, before India participated in the war. Such a declaration was not

forthcoming. The Viceroy stated that the future goal of constitutional development of India was, as already declared, Dominion Status. The Congress party insisted on the British Government agreeing that India should be allowed to draw up her own constitution by convening a Constituent Assembly. The British Government required an agreement between the Hindus and Muslims as regards their respective representation, and the solution of the minority problem as a condition precedent to the grant of the demand of the Congress. In these circumstances the Congress ministries in seven Provinces out of eleven resigned. As it was not possible to form alternative ministries, in each of these seven Provinces, the Governor issued a Proclamation under Section 93 of the Constitution Act and took over the Government, thus establishing what came to be known as "Governor's Rule."

### THE CRIPPS OFFER

With the Japanese advance towards the Indian frontier in the spring of 1942, the British Parliament sent Sir Stafford Cripps, a member of the British War Cabinet, to India to discuss with the Indian leaders a new Draft Declaration of British policy towards India known as the "Cripps Offer." The Offer was examined and was rejected by all the leaders, who demanded the immediate establishment of responsible government at the Centre, with only a few reservations required by the war. The Congress then passed a resolution known as the "Quit India Resolution," as a result of which Congress leaders and workers were arrested and imprisoned. During the war the Provinces were under "Governor's Rule." All the Provincial Assemblies, whose normal lives had been extended from time

to time since 1940, were dissolved and new elections were held by the end of March 1946. "Governor's Rule" in the Provinces came to an end on March 31, 1946, Congress ministries were formed in eight Provinces, and Provincial Autonomy was once more restored.

A Cabinet Mission was sent to India. In accordance with its proposals, India's demand for a Constituent Assembly to draw up her own constitution was granted and the Assembly was set up. After it had started its work the Indian Independence Act of 1947 was passed, and the Constituent Assembly, which was an *ad hoc* body, was made a statutory body and drew up the Indian Constitution which came into existence on January 26, 1950, under which each Province, which is called a State, became a separate distinct legal unit with a Parliamentary or responsible Executive.

#### EXECUTIVE IN CHIEF COMMISSIONER'S PROVINCE

The Chief Commissioners' Provinces were British Baluchistan, Delhi, Ajmer-Merwara, Coorg and the Andaman and Nicobar Islands, Panth-Piploda and other Provinces which were units of the Federation, which were administered by the Governor-General acting through Chief Commissioners appointed by him in his discretion.

The Governor-General made regulations for them. They had no legislature and they were administered centrally.



## CHAPTER V

# GROWTH OF THE PROVINCIAL LEGISLATURES

### HISTORICAL

The history of the Legislatures in the Provinces up to 1833 has already been given in the chapter on the Central Legislature.

The Charter Act of 1833 simplified the legislative machinery. The Governments of Bombay and Madras were drastically deprived of their powers of legislation and left only with the right of proposing to the Governor-General in Council projects of laws which they thought expedient. The Indian Councils Act of 1861 restored to Madras and Bombay the powers of legislation. But the previous sanction of the Governor-General was made requisite for legislation by local authorities in certain cases, and all Acts of the local councils required the subsequent assent of the Governor-General in addition to that of the Governors. The provincial Legislatures were merely enlargements of the provincial Executive councils, for the purpose of legislation.

By the Indian Councils Act of 1893 the provincial Legislatures were enlarged, but an official majority was maintained. Their functions, which were also enlarged, were mostly advisory. By the Morley-Minto Reforms of 1909 the provincial Legislatures were further enlarged up to a maximum limit of fifty additional members in the larger Provinces, and up to thirty in the smaller, and a non-official majority was introduced.

The principle of election was recognized in an indirect manner. 'Communal representation was introduced for the first time.' The Morley-Minto councils, with powers to legislate and to advise but with no effective administrative control, had been presided over by the head of the provincial Executive himself, who exercised great influence over all deliberations. These councils still embodied the idea that the executive government was responsible for the purposes of law-making. The Montagu-Chelmsford Report definitely stated that these councils had exhausted their usefulness by 1918.

By the Government of India Act, 1919, important changes were introduced in the composition and functions of the provincial Legislatures.

#### THE ACT OF 1919.

In the Governors' Provinces the Act set up a unicameral and triennial Legislature called the Legislative Council. The President of the Council was elected after the first four years by its own members and approved by the Governor. At least seventy per cent of its members were elected, and not more than twenty per cent were official members. The franchise was broadened. Communal representation was not only recognized but was further extended. The authors of the Montagu-Chelmsford Report expressed their opinion that the communal electorate was opposed to the teaching of history, that it perpetuated class divisions, that it stereotyped existing relations, and that it constituted "a very serious hindrance to the development of the self-governing principle." But nonetheless they admitted the need of its continuation and conceded it to the Sikhs in the Punjab. In all Provinces constituencies were divided into Mohammedan and non-Mohammedan. The

principle of communal representation was further supplemented by special arrangements for the reservation of seats for certain sections of the population such as non-Brahmins and Marathas. Depressed classes, apart from their right of voting in the non-Mohammedan constituencies, were given further representation by nomination. Nomination was resorted to in order to secure representation of the workers in organized industries. Separate electorates were provided for Indian Christians, Anglo-Indians and Europeans; special seats were given to business interests both Indian and European, to landlords and universities. Thus the representation of the electorate for the introduction of responsible government was strangely but truly the representation of rival communities and different interests.

The Legislatures were given powers to legislate "for the peace and good government of the Province subject to certain qualifications." But on a specified list of matters they could not legislate even for their own territorial area without the previous sanction of the Governor-General. Moreover Bills passed by provincial Legislatures required the assent not only of the Governor but also of the Governor-General. Certain classes of Bills affecting religion, land revenue, etc., were to be reserved by the Governor for the consideration of the Governor-General. The Governor had the usual power of veto, and he had also the power of "certification." This meant that if the Legislature refused to pass a Bill relating to a reserved subject the Governor could certify that its passage was "essential for the discharge of his responsibility for the subject." The Bill was thereby put in the same position as though it had been actually passed by the legislature.

An analogous power of over-riding the unwillingness of the provincial Legislature was placed in the Governor's hands in relation to finance. The provincial expenditure was divided into non-votable and votable items, the former comprising nearly seventy-five per cent of the total provincial expenditure. The Legislature had thus a control over twenty-five per cent of the expenditure, subject to the Governor's power of restoring any item of expenditure refused by the Legislature if that expenditure was essential to the discharge of his responsibility. Again, the Governor had power in case of emergency to authorize necessary expenditure for the safety or tranquillity of the Province.

#### PROVINCIAL LEGISLATURES UNDER THE CONSTITUTION ACT OF 1935

Under the Constitution Act of 1935 the provincial Legislatures consisted of the King, represented by the Governor, and one or two Chambers.

Bombay, Madras, Bengal, the United Provinces, Bihar and Assam had two Chambers known as the Legislative Council and the Legislative Assembly. The rest of the Provinces—the Punjab, the Central Provinces and Berar, the North-West Frontier Province, Orissa and Sind—had a single Chamber called the Legislative Assembly. Before 1937 all the Provinces had only one Chamber. The second Chamber was created to provide a check on hasty and rash legislation and to secure the representation of vested interests. Indian public opinion was against the creation of a second Chamber in the Provinces.

The Legislative Assemblies of the Provinces were composed as follows:—Madras, 215 members; Bombay,

## COMPOSITION.

175; Bengal, 250; the United Provinces, 228; the Punjab, 175; Bihar, 152; the Central Provinces, 112; Assam, 108; the North-West Frontier Province, 50; Orissa, 60; and Sind, 60.

The members of the Assembly were elected. The electorate in every Province were divided into different communities and interests. The total number of seats in all the provincial Legislatures was 1,535, of which Hindus had 808, including 151 reserved for the scheduled caste, Mohammedans had 482, and women had 41.

The composition of the Legislative Council in the six Provinces was as follows:—Madras, 54 to 56 members; Bombay, 29 to 30; Bengal, 63 to 65; the United Provinces, 58 to 60; Bihar, 29 to 30; and Assam, 21 to 22.

The Assembly, unless dissolved sooner, continued for five years. The Council was a permanent body, one-third of its members retiring every third year. Both Chambers had to hold annual session. The Governor had the right to summon either Chamber or both, prorogue them or dissolve the Assembly. He could address the Legislative Assembly or both Chambers and for that purpose require the attendance of the members, and could send to them a message on pending Bills or other matters. The Chamber had to consider the matter referred to in the message without delay. Ministers and the Advocate-General had the right to speak in the Chamber or Chambers or in the joint sitting and take part in the proceedings, but could vote only if elected or nominated a member. Each Chamber elected its Speaker and Deputy Speaker from amongst its members. He could be removed only by



a vote of the majority of all members on fourteen days' notice. On the dissolution of the Chamber, the Speaker did not vacate his office until immediately before the first meeting of the new Assembly. The salaries of the Speaker and the President were fixed by the Governor. All questions in the Chamber or in the joint sitting of the two Chambers were determined by the majority of votes of the members present and voting, other than the presiding officer, who had only a casting vote. The quorum was of one-sixth of the members.

Members were British subjects or rulers of States or subjects of the federated States. Every member had to

MEMBERS OF THE  
LEGISLATURE.

take an oath or affirmation of  
loyalty or allegiance to the King

before he took his seat. A member could resign his seat. No person could be a member of both

Chambers. If a person was chosen by both Chambers he was to resign from one. No person was to be a member of the Federal as well as of the Provincial Legislature.

The seat of a member became vacant after he resigned it or became subject to any of the prescribed

disqualifications. The disqualifications were, (1) holding of any office of profit under the Crown, (2) unsoundness of mind declared by a competent court,

(3) undischarged bankruptcy, (4) conviction of offence in connection with elections, (5) conviction in British

India or a federated State of an offence punished by transportation or imprisonment of not less than two

years, unless five years had elapsed since release, and (6) failure in certain cases to return electoral expenses.

If a disqualified person sat and voted he had to pay a penalty of Rs. 500 a day which was recoverable as a

debt due to the Province.

The privileges of the members were similar to those enjoyed by the members of the Central Legislature.

The Provincial Legislature regulated its own procedure and business. The Governor in his discretion, after consultation with the Speaker, made rules relating the procedure and conduct of business, in matters arising out of or affecting any of his special responsibilities. He made rules for securing the timely completion of financial business and other matters. All proceedings in the Provincial Legislature were in English, but the rules permitted persons unacquainted or insufficiently acquainted with the English language to use another language.

A Bill normally required the assent of both Chambers to become law. It was, except in case of a Financial Bill, to originate in either Chamber. The rest of the legislative procedure was on the same lines as that which was in operation in the Central Legislature.

As regards financial matters the Governor was required to lay before the Legislature the annual financial statement of the estimated receipts and expenditure, showing separately the sums charged on the revenues of the Province, and also the sums required to meet other expenditure proposed to be made from the provincial revenues. Expenditure necessary for the discharge of the Governor's special responsibility was also distinctly indicated.

The items of provincial expenditure were of two kinds: (1) non-votable and (2) votable. The non-votable items were (1) Governor's salary and allowances, (2) debt charges, (3) salaries and allowances of Ministers, Advocate-General and Judges of the

High Court, (4) expenditure for excluded areas, (5) sums necessary to satisfy any judgment, decree or award of court, (6) any other expenditure charged by the Act. It was open to either Chamber to discuss but not to vote these non-votable items. All other items of expenditure were votable and were submitted in the form of demands for grants recommended by the Governor. The Governor alone had the right to propose expenditure or an increase in the expenditure or taxation. In the case of disagreement between the two Chambers, a joint sitting decided the question. The Governor authenticated a *schedule specifying the grants made by the Chambers*, and it constituted the authority for expenditure for the year. The Governor alone had the initiative in recommending a Bill as regards taxation and financial matters. Such a Bill could not be introduced in the Legislative Council. No Bill, if it involved expenditure, could be passed by the Legislature without the Governor's recommendations.

#### POWER OF THE GOVERNOR TO PROMULGATE ORDINANCES

The Governor was given emergency powers as regards legislation. He might, at the instance of his Ministers, when the Legislature was not in session, if satisfied that circumstances existed which required immediate action, issue an ordinance. He was not, without the Governor-General's sanction, to issue an ordinance which as a Bill could only be introduced with the latter's sanction or which was to be reserved. The ordinance had the force and effect as an Act of Legislature. It was to be laid before the Legislature when it met and it lasted only for six weeks unless disapproved

earlier by resolution of the Chamber or Chambers. It could be disallowed by the King. It could be withdrawn at any time by the Governor.

The Governor might also under similar circumstances, in matters involving his discretion or individual judgment, issue an ordinance having a duration of six months. It could have been extended for a further period of six months. This power of issuing an ordinance was to be used with the concurrence of the Governor-General except in emergency.

### GOVERNOR'S ACT

The Governor, with the concurrence of the Governor-General, might, if he considered that for the discharge of his functions which were in his discretion or judgment provision by legislation was necessary, issue permanent Acts known as Governor's Acts either forthwith or after considering the views of the Legislature. Every Governor's Act was to be communicated forthwith through the Governor-General to the Secretary of State and was to be laid before Parliament.

### PROVISION IN CASE OF FAILURE OF CONSTITUTIONAL MACHINERY

The Governor was given special powers in case of failure of constitutional machinery. If he was satisfied that a situation had arisen in which the government of a Province could not be carried on under the Act, he might in his discretion, with the concurrence of the Governor-General, issue a Proclamation, assuming to himself all powers or any powers exercisable by any provincial body or authority. To give effect to it he might modify the Act as far as it affected any provincial body or authority except the powers vested in and

exercisable by the High Court. Any such proclamation could be revoked or varied by subsequent proclamation. It was to be communicated forthwith to the Secretary of State and was to be laid before both Houses of Parliament. It ceased to operate after six months, unless both Houses of Parliament approved its continuance. Laws made by the Governor under proclamation had effect for two years after their expiry subject to repeal or amendment by the appropriate Legislature.

The working of the Provincial Legislatures under the Constitution Act of 1935 was not satisfactory. Firstly, the Legislatures were boycotted by the Congress Party for some years, hence they were never given a proper chance. Secondly, the absence of well-organized parties and an effective opposition in the Legislatures ready to form an alternative Government hindered the effective working of the Provincial Legislature and consequently of the responsible Government.



## CHAPTER VI

### EVOLUTION OF PROVINCIAL AUTONOMY

#### (i) IN LEGISLATION

Up to 1833 the Presidencies of Bengal, Madras and Bombay made their own rules and regulations for the areas under their jurisdiction, and the control exercised by the Governor-General and the Council of Bengal over the Presidencies of Madras and Bombay was limited to transactions with Indian potentates and questions affecting war and peace. For the ordinary internal administration of the Presidencies of Madras and Bombay, and for the making of laws for these areas the Governor-General of Bengal had previous to 1833 no responsibility. In other words, for purposes of legislation the Presidencies of Madras and Bombay were autonomous. By the Charter Act of 1833 the Governor-General of Bengal became the Governor-General of India, and the Government for the first time became the Government of India. Its authority became co-extensive with the area of British possessions in India. The independent legislative powers formerly exercised by the Governments of Madras and Bombay were taken away. In other words, it established a legislative centralization. Between 1833 and 1861 the Presidencies of Madras and Bombay had no power to make laws, and whatever laws they wanted were suggested by them and they were enacted by the Governor-General in Council acting as the Legislature of India. The Indian Councils Act of 1861 restored Provincial Legislative Coun-

cils, which were authorized to make laws for their Provinces subject to the overriding power of the Central Legislature. The Provincial Legislatures from 1861 to 1919 were mere agents of the Central Government both in executive and legislative matters. The entire governing system was in theory one and indivisible. The rigour of the logical application of that conception to administrative practice had gradually been mitigated by the wide delegation of powers and by the customary abstention from interfering with the agents of administration. In short up to 1919, from the administrative, financial and legislative point of view, the concentration of authority at the Centre was a cardinal feature of the Constitution of India.

Up to 1919 the Government of India was essentially a unitary government with concentration of authority at the Centre. Every Provincial Government was under a statutory obligation to obey the orders of the Governor-General in Council and was under his superintendence, direction and control in all matters relating to the government of his Province; and the Central Legislature was supreme over all persons and matters in British India. The object of the Government of India Act 1919 was to introduce provincial autonomy, and this was achieved by relaxing the control of the Centre over the Provinces in matters of legislation, administration and finance. The Government of India Act 1919 did not by any specific enactment alter those relations, but it added a new section which provided that statutory rules might be made (a) for the classification of subjects in relation to the functions of Government as Central and Provincial subjects, for the purpose of distinguishing the functions of local government and local legislatures

from the functions of the Governor-General in Council and the Indian Legislature, (b) for the devolution of authority in respect of Provincial subjects to local governments, and (c) for the allocation of revenues or other moneys to those governments. These rules were to be made by the Governor-General in Council with the sanction of the Secretary of State in Council and were not subject to repeal, or alteration by the Indian Legislature or by any local legislature. It was thus that the Devolution Rules of 1919 came into existence. They gave to the Provinces for the first time a quasi-independence of the Centre by allotting to them sources of revenue of their own and assigning them separate administrative and legislative spheres. Provincial Legislatures were authorized to make laws for the subjects which were classified as provincial, but these laws were subject to the overriding power of the Central Legislature. Thus, in matters of legislation, under the Act of 1919, the Provinces obtained distinct and separate powers of legislation with respect to subjects classified as provincial, but in exercising those powers they exercised the devolved authority and not their own authority. But it was a great step towards legislative autonomy.

Under the Government of India Act 1935 the Provinces became independent units deriving their authority directly from the Crown, and they secured their own legislatures having exclusive authority within the Provinces in a precise and definite sphere, and in that exclusively provincial sphere broadly free from control by the Central Government and the Central Legislature. This represented a fundamental departure from the scheme under the Act of 1919. Under the Act of 1919 the Provincial Governments exercised

devolved authority from the Government of India and not independent authority. Under the Act of 1935 the Provinces exercised independent authority derived directly from the Crown, and thus they enjoyed legislative autonomy. The evolution of legislative autonomy of the Provinces became complete under the Constitution Act of 1935 when they became units of the Indian federation.

The evolution of legislative autonomy of the Provinces has two aspects. Firstly, the Legislature was only an extension of the Executive Council and as such was directly and effectively under the control of the Executive. With the differentiation of functions the control of the Executive over the Legislature in the legislative field was progressively diminished, and by 1919 the whole legislative work was done by the Legislature, of course under the initiative and guidance of the Executive. Secondly, till 1919 the powers of the Provincial Legislatures to enact laws for the Provinces were exercised by the Provincial Legislatures not in their own right but as mere agents of the Centre. The devolved authority of the Provincial Legislatures became an independent authority in the prescribed field of the provincial sphere under the Act of 1919, and in the whole provincial sphere under the Constitution Act of 1935.

## (ii) IN FINANCE

The East India Company, working on commercial principles, kept full control of all revenues and expenditure in their own hands. Till 1858, there was a highly centralized system of government, under which the Governor-General in Council retained complete control over financial resources as well as expenditure.

Though there was a complete reorganization of the finances of British India after the transfer of government from the Company to the Crown in 1858, no innovation was made in this respect. The Provincial Governments remained merely agents of the Central Government for collecting revenues, and they could not incur any expenditure, however trivial, without the formal orders of the Government of India. In short, in 1861 there was complete, thorough and effective financial centralization.

The financial history of the next sixty years is very largely a history of the growth of the financial authority of the Provincial Governments by a gradual process of devolution of powers to them from the Central Government.

James Wilson, who was appointed the Finance Member of the Government of India in 1859, found a deficit in the Indian budget. Hence his first task was to restore financial equilibrium. The financial stringency rendered any relaxation of central control over provincial revenues and expenditure impracticable. The centralized system had three defects: (1) the distribution of the public income among the Provincial Governments every year degenerated into something like a scramble in which the most violent had the advantage, (2) as local economy brought no local advantage, the stimulus to avoid waste was reduced to a minimum, (3) as no local growth of income led to local means of improvement, the interest in developing the public revenues was also brought down to the lowest level. To remove some of these defects Lord Mayo's Government in 1870 took the first important step towards financial decentralization. An attempt was made to make the Provincial Governments res-



possible for the management of their own Provinces. Each Provincial Government was given a fixed grant for the upkeep of definite services such as police, jails, education and the medical services, with powers, subject to certain conditions, to allocate as it thought best and also to provide for additional expenditure by the exercise of economy, and, if necessary, by raising local taxes. The Government of India retained all the residuary revenues for its own needs.

This limited measure proved markedly successful and provided the justification for a further step taken during the time of Lord Lytton. In 1877, important heads of revenue such as stamp duties, alcoholic excise and income tax collected in the Provinces were provincialized, while the responsibility of the Provinces in regard to expenditure was extended to the departments of land revenue, general administration and law and justice. Fixed grants, however, from the Centre continued, and in the case of two Provinces a definite proportion of land revenue was assigned in lieu of a fixed sum. For the first time there was the classification of revenue heads into central, provincial and divided. The growing needs of other Provinces were met by treating land revenue as one of the divided heads. Settlements on these lines were made with the Provinces for five years in 1882 and were renewed in 1887, 1892 and 1897.

In 1904, these settlements were made quasi-permanent. The revenues assigned to the Provinces were definitely fixed and were not subject to alteration by the Central Government save in case of extreme necessity. The Decentralization Commission considered the question but did not propose any changes. In 1911 Lord Hardinge's Government made the settlement per-

manent. The fixed assignments to Provinces were reduced and the provincial shares of growing revenues were increased. The interventions of the Central Government in the preparation of the provincial budgets were curtailed. In distributing these revenues the needs of the respective Provinces were taken into consideration, but it has been rightly pointed out that in practice that Province came off best which was able to exercise the greatest pressure at Delhi or Simla.

To summarize the position before the Reforms of 1919: the revenue heads were classified as Central, Provincial, and divided. Customs, salt, opium, railways, posts and telegraphs, mint and tributes from native princes were Central heads. Registration, police, education, law and justice, medical relief, minor irrigation, provincial civil works, were provincial heads. Land revenue, excise, income tax, stamps, forests and major irrigation were divided heads. Receipts from the first went to the Central Government, from the second to the Provincial Governments, whilst those from the third were shared equally by the Central and the Provincial Governments. The Central Government was responsible for central expenditure and the Provincial Governments for provincial expenditure. The Provincial Governments had no independent power of taxation or of borrowing and there was a strict Central budgetary control over them.

The Montagu-Chelmsford Report is an important document in the history of financial devolution in India. After reviewing the financial system then existing the joint authors pointed out how seriously it operated as an obstacle to provincial enfranchisement.

They laid down that financial devolution was a condition precedent to the introduction of a measure of responsibility in the Provinces. With this object they formulated a new basis of financial settlement to suit a wide measure of administrative and legislative devolution. The scheme was based on the abolition of divided heads and on the securing of independent sources of revenue to the Centre and Provinces to meet their respective obligations. A clear-cut division of the revenue heads was made. Of the divided heads, income tax was made Central, whilst stamps were classified as general and judicial, the former being made Central and the latter Provincial. This redistribution of the sources of revenue resulted in a deficit of ten crores in the Central budget. Hence, as a transitional measure to maintain the existing relative financial positions of the Centre and the Provinces, a system of contribution from each Province to the Centre was adopted. Such contributions were fixed on the estimated provincial surpluses resulting from the redistribution of the heads of revenue. To enlarge the taxing power of the Provincial Governments certain subjects of taxation were scheduled as reserved for the Provinces.

A committee under Lord Meston was appointed to fix the contributions from the Provinces and to consider the claim of Bombay to a share of the proceeds of income tax. The Committee fixed the contribution for each Province. This was known as the Meston Award. The Joint Select Committee accepted the contributions fixed by the Award and recommended their total extinction within a few years. On the grounds of policy, Provinces were to be given some share in the increase of the revenue from income tax.

Hence under the Act of 1919 the most important sources of provincial revenues were, (1) receipts from irrigation, land revenue, forests, excise on alcoholic liquors and narcotics, stamps and minerals, (2) a share in the growth of revenue derived from income tax in the Province so far as that growth is attributable to an increase in the amount of income assessed; (3) the proceeds of any taxes which may lawfully be imposed for provincial purposes. The Provincial Legislature was empowered to impose a new tax if it was included in the schedule. The sources of revenue of the Central Government were not specified as such in the Act, but the heads classified as Central included customs, income tax, post and telegraphs, railways, the cultivation of opium and its sale for export, mint and tributes from native princes.

The residuary power of taxation remained with the Central Government.

The Provincial Governments were for the first time empowered to borrow loans for certain purposes and on certain conditions. The provincial accounts were separated and the budgetary control of the Central Government was relaxed.

The distribution of resources made under the Act of 1919 proved inadequate to meet the requirements of the Provinces. The matter was carefully investigated by Mr. W. T. Layton (afterwards Lord Layton), who acted as financial adviser to the Simon Commission. The Constitution Act of 1935 embodied a scheme of distribution of financial resources with a view to meeting the requirements both of the Provinces as well as the Centre. Under that scheme the Provinces and the Centre were, to a very large extent, given separate and independent sources of revenue, in conformity with

the principle of Federal finance. The Provinces were given a certain share of income tax. Under the Constitution Act of 1935, the States had separate sources of revenue and they were also entitled to a share in income tax and certain grants from the Centre. In matters of finance the States were not entirely independent of the Centre.



## CHAPTER VII

### GROWTH OF OTHER INSTITUTIONS

#### DEVELOPMENT OF THE JUDICIARY

The early Charters of the Company conferred judicial authority upon the Governor and Council of the several factories for

#### HISTORICAL.

the trial of persons belonging to the Company and living under them. In 1726 a Mayor's Court was established for this purpose at each of the three Presidencies of Calcutta, Madras and Bombay, with the right of appeal to the Governor in Council and in certain cases to the King in Council. The Governor in Council also constituted courts for the trial of all offences except high treason. There were, side by side with these, native courts. The native system of government was based upon the union of all authority, judicial, fiscal and military, in the same hands. At the head was the Nawab—Deputy of the Delhi Emperor who was both a Diwan and a Nizam. As Diwan he collected the revenue and superintended the administration of civil justice. As Nizam he exercised criminal jurisdiction and controlled the police. Under the Nawab, the zamindars exercised civil and criminal jurisdiction. The criminal law administered was the Mohammedan law. The civil law was Hindu or Mohammedan as the case required. With the acquisition of *divani* from the Mogul Emperor in 1765, Clive introduced a dual system. The Nawab of Bengal continued to administer criminal justice in accordance with the Mohammed-

dan law. The administration of civil justice and the collection of revenue were undertaken by the Company but were still carried out by Indian judges. This dual system proved a miserable failure. In 1771, the Company "stood forth as Diwan," and Warren Hastings, who was appointed Governor of Bengal, devised a scheme which placed the entire administration of justice as well as the collection of revenues under the supervision of English officers. Each district was placed in charge of a Collector assisted by a native Diwan. The Collector and the Diwan constituted a court of civil justice called the Diwani Adalat, from which an appeal lay to the Sadar Diwani Adalat at Calcutta, composed of the Governor in Council, also assisted by native officers. A criminal court of Fozdari Adalat was likewise established for each district, consisting of a Kazi, a mufti and two moulvis with whom the Collector sat simply to watch the proceedings. From this court an appeal lay to the Sadar Nizamat Adalat. This court was also under the supervision of the Governor in Council.

The Regulating Act, 1773, which conferred legislative authority on the Governor-General in Council, also constituted a Supreme Court of Judicature in Bengal, composed of a Chief Justice and four puisne judges, all nominated by the Crown. It was intended to become the general supervisor of justice throughout Bengal, but the vague nature of its powers led immediately to difficulties with the executive authority of the Governor-General in Council and the native revenue officers. The dispute was settled by Parliament by an Amending Act which declared among other things that the Supreme Court had no jurisdiction over the Governor-General in his public capacity.

In 1774 the Collectors were withdrawn and native Amils were appointed in their place for the administration of civil justice, the superintendence of revenues being entrusted first to provincial courts and afterwards to a Committee of Revenues. In 1780 sixteen courts of Divani Adalat were created, each under the charge of a covenanted civilian styled the Superintendent. In 1781 the provincial courts of the Company received express recognition from Parliament. The Governor-General in Council was constituted the highest court of appeal with an ultimate appeal to the King in Council in cases exceeding £5,000/- in value.

Lord Cornwallis introduced considerable changes in the judicial system. In 1790 the Sadar Nizamat Adalat was reconstituted so as to consist of the Governor-General in Council, together with the Kazi and two muftis. In 1793 ordinary criminal jurisdiction was entrusted to four courts of circuit, each composed of two or three covenanted civilians with native assessors. As regards civil justice the duties of Collectors were separated from those of the magistrates. Twenty-six civil judges were appointed, each with a Hindu and Mehammedan assessor. From them appeals lay to four provincial courts, which were identical with four courts of circuit, and finally to the Sadar Divani Adalat, consisting of the Governor-General in Council. These civil judges were also constituted magistrates to hold preliminary inquiries in important criminal cases.

Under Marquis Wellesley the two appellate courts, Sadar Nizamat Adalat and Sadar Divani Adalat, were reconstituted. Instead of consisting of the Governor-General in Council they were composed of three or more judges selected from the covenanted service, and

REFORMS OF LORD  
CORNWALLIS.

thus they remained until merged in the High Courts in 1862. The ordinary courts of justice were constituted in their present form by Lord William Bentinck. The provincial courts of appeal in civil cases were abolished. Full criminal jurisdiction was conferred upon the civil district judges, and the magisterial authority formerly exercised by the civil judges was transferred to the Collectors, thus combining the executive and judicial functions in one person, a system which continues to this day. Lord Cornwallis established inferior civil courts of native Commissioners outside the Presidency towns with graded jurisdiction. Lord William Bentinck instituted a new class known as Principal Sadar Amils, who subsequently came to be known as Subordinate Judges.

In 1862 the Indian High Courts Act was passed. It established High Courts at Calcutta, Madras and Bombay in which the Supreme Courts as well as the Sadar Divani Adalat and the Sadar Nizamat Adalat were merged. Under the same Act a High Court was established at Allahabad in 1866. Under the Indian High Courts Act of 1911, High Courts were constituted at Patna and Lahore. A chief court was established in the Central Provinces, the North-West Frontier Province and Sind. Thus the whole of British India before the Act of 1935 was under the jurisdiction of either Chartered High Courts or other courts with more or less similar powers. There was no supreme or central court for the whole of British India. A High Court or a similar court was the supreme judicial tribunal in a Province, from which in certain cases ultimate appeals lay to the Privy Council in London. The inferior courts in all Provinces were organized

mostly on the lines laid down in the time of Lord William Bentinck.

#### SEPARATION OF JUDICIAL AND EXECUTIVE FUNCTIONS AND POWERS

There is no question of separating executive functions from civil judicial functions. In all States, all civil suits are tried by judicial officers who have no direct connection with the executive or the police work of the country. The same is true of important criminal trials in the superior criminal courts: the High Courts, the Chief Courts, the Courts of Judicial Commissioners and Courts of Sessions, presided over by judicial officers who have no executive authority. But minor criminal cases are still tried in all States by officers who exercise executive and revenue functions.

The District Officer, the Assistant or Deputy Collector and the Mamlatdar are both executive and judicial officials—revenue collectors and magistrates. Shortly after the grant of *divani* in 1765, Warren Hastings placed the collection of revenue and the administration of justice in the hands of one officer, the Collector. Lord Cornwallis separated these two functions, but they were again combined in one person by Lord William Bentinck, and this system had been continued with some modifications till today.

This union of executive and judicial functions in the person of the Collector and his subordinate magistracy is an anomaly to which strong objection is taken by Indian public opinion. It is regarded as a violation of the elementary principle of common law that the prosecutor should not also be a judge. Concentration of power is undoubtedly dangerous to liberty, and all will agree that a man who is trying a criminal should



try him in a purely judicial spirit and should not be influenced by anxiety as to promotion or prospects. The reasonableness of this demand is admitted by the Government, but it is pointed out that there is a side of magisterial work which may be regarded as preventive rather than punitive, and that this is of great importance in India, where crime is unfortunately rife and where breaches of the peace may arise at any time. Under these circumstances the head of the district administration should be sufficiently well armed to be able to deal effectively with the danger of upheaval and outbreak. No doubt it is difficult to draw a precise line between what is preventive justice and what is purely judicial work. It is urged that such a separation will result in lowering the prestige and authority of the District Officer and that it will lead to an increase in expenditure. It is difficult to defend the existing system. Even the Government has conceded that with the improvement of the finances such a separation of executive and judicial functions is to be effected as soon as possible. This reform is very necessary and should be carried out promptly in the interest of justice as well as efficiency of administration. One of the Directive Principles of the Constitution is that "The State shall take steps to separate the judiciary from the executive in the public services of the State." Acting upon this directive, some States have already transferred the judicial functions hitherto exercised by the executive officers to judicial officers.

#### GROWTH OF THE SERVICES

The Indian Civil Service was derived from the staff of merchants, factors and writers employed by the East India Company when it was a purely commercial

body. For some time after the Company acquired political power, the administration was left in the hands of the native subordinates. In 1722 the Company began to take the administration into its own hands. Between 1790 and 1793 all branches of the public service manned by European officers were placed on a clear and permanent basis by Lord Cornwallis, who created the "Covenanted Service." All civil posts were reserved for this service. Promotion was regulated by seniority. A college was set up at Calcutta for the training of junior civilians in law and oriental languages. In 1806 Haileybury College was established to train the members before they joined the service. Admission was by nomination by the Court of Directors. In 1853 the principle of regulating admission to the College by open competition was laid down. On the transfer of the Government to the Crown in 1858, the principle of open competition was reaffirmed.

It was enacted in 1833 that "No native of the said territories nor any natural born subject of His Majesty resident therein shall by reason only of his religion, place of birth, descent, colour, or any of these, be disabled from holding any place, office or employment under the said (East India) Company." In spite of this provision, up to 1870 only one native of India had successfully competed for the Covenanted Service. Owing to social, religious and financial difficulties it was not possible for Indians to go to England to compete for the service. Hence in 1870 it was provided by an Act that natives of India of proved merit and ability might be employed in the Civil Service without going through the competitive examination in London. One or two appointments only, and those in the judi-

cial branch of the service, were made under it. The subject was reconsidered in 1879, and fresh provision was made under which the recruitment by this means could extend up to one-fifth of the total number of civilians appointed in the year. These appointments were generally to be confined to young men of good family and social position; possessed of fair abilities and education. For some years a few persons were recruited from this source. But the experiment proved a failure, as men who combined high social position with the requisite intellectual and educational qualifications could not be found. Owing to the failure of this experiment the Government, with the object of devising a scheme to do justice to the claims of natives of India to higher employment in the public service, appointed a Commission which submitted its report in 1887. On the advice of this Commission, the Civil Service was divided into three branches, the Indian Civil Service, the Provincial Civil Service and the Subordinate Civil Service, the first being entirely recruited in England by competitive examinations.

The Civil Service in India came under a detailed review in 1912 by the Royal Commission on Public Services of which Lord Islington was Chairman. It submitted its Report in 1915. The Commis-

THE ISLINGTON COM-  
MISSION 1912-15.

sion devoted itself mainly to exploring the possibilities of employment of the conditions of service. Owing to the war, the consideration of its proposals was deferred and the Report was not published till June 26, 1917. Before it could be considered the facts on which it was based had materially altered. On August 20, 1917, the Secretary of State announced in the House of Commons that the policy of His Majesty's Govern-

ment towards India was, among other things, that of the increasing association of Indians in every branch of the administration. During the war the cost of living had gone up, a factor not taken into consideration by the Commission in the rates of pay proposed. Hence the orders passed on the recommendations of the Commission in 1919-20 suffered inevitably from having been based on an investigation which subsequent events had rendered obsolete.

The Montagu-Chelmsford Report reviewed the services and in a masterly manner explained their position under the reforms. The authors of the Report pointed out that recruitment in England was not adequate to supply a sufficiency of Indian candidates, hence the system should be supplemented by fixing a definite percentage of recruitment to be made in India. The Report laid stress on Indianization, improvement in the conditions of the European members, and statutory protection of the services. The members of the services were perturbed at the introduction of the reforms, and demanded safeguards. It was recommended that the members of the All-India Services, with a few exceptions, might be allowed to retire before they completed the service ordinarily required for a retiring pension, and in this case they were to receive a pension proportionate to their actual service. After the inauguration of the reforms and the new policy, the relations between the political classes and the services, instead of being improved were markedly worsened. Persistent criticisms of the bodies in the Legislatures had a discouraging effect on bodies accustomed to a traditional respect. Other factors aggravated the trouble. The Non-co-operation Movement of 1920-22 involved the

officers and their families in general disrespect and even in serious danger. Moreover, their financial position, owing to a great rise in prices, was at the time a source of great anxiety to them. Hence, pursuant to the recommendation of the Montagu-Chelmsford Report, for those officers in the service to whom the new conditions were so repugnant that they preferred to retire, a scheme was adopted under which All-India officers selected for appointment before January 1, 1920, and not permanently employed under the Government of India, were allowed to retire before they had completed the normal full service on a pension proportionate to their length of service. Under this scheme, 200 All-India service officers had retired by 1922, and by 1924 the number had risen to 345. By far the greater number of them were officers of ten to twenty-five years' service. This exodus had a secondary effect which was equally important. Recruitment to the services in England was suspended during the war, and the tradition that India offered a career for young Englishmen had hardly begun to revive when it was confronted with the outspoken discontent of the services in India and the premature retirement of many officers. The sources of recruitment in England had practically dried up. While this was the situation within the services, Indian political opinion was concentrated on two points: (1) The All-India services were at this time mainly European in composition. Though the Preamble to the Act of 1919 declared that "the increasing association of Indians in every branch of Indian administration" was the policy of the Parliament, Indian opinion did not accept as adequate the rate of Indianization that had been established. (2) It was also contended by



some Indians that the recruitment and control of any service by the Secretary of State should cease altogether. These factors led to the appointment of the Royal Commission on the Superior Civil Services in India of which Lord Lee was Chairman. The Commission submitted its Report in 1924. Its recommendations have been accepted and acted upon by Government.

The Lee Commission made recommendations as regards (1) Indian Civil Service, (2) Indian Police Service, (3) Indian Forest Service, (4) Indian Agricultural Services, (5) Indian Educational Service, (6) Indian Civil Service of Engineers, (7) Indian Veterinary Service and (8) Indian Medical Service (civil). The Commission recommended that as regards the Indian Civil Service, Indian Police Service and Indian Forest Service, and the Irrigation Branch of the Service of Engineers, the Secretary of State should continue to recruit for these services. The other services, from (5) to (8), operated mostly in the transferred field. It was recommended that the recruitment of the first four services should be so made as to achieve a proportion of fifty Europeans to fifty Indians within twenty years. The Commission laid down the percentages for various services. Recruitment for the services employed in the transferred field was handed over to the Provincial Governments, and no restriction was placed upon them as to the source of their recruitment. The special privileges and emoluments of the European members of the service were safeguarded.

The Government of India Act of 1919 provided for the establishment of a Public Service Commission to discharge functions in regard to recruitment and control of Public Services in India. Such a Commission

was appointed in 1925. Since 1922 a certain proportion of recruitment for the Indian Civil Service was made on the result of a competitive examination held in India.

As recruitment was stopped during the First World War, certain persons were nominated to the Indian Civil Service. The recruitment in England to the Indian Civil Service was progressively decreased, and more persons were recruited for it in India. As a result of the partition of India, a large number of members of the services retired and the strength of the Indian Civil Service was depleted. The Central Public Service Commission as well as the Provincial Service Commissions recruited members of the Central Services and the Provincial Services.

The Central Services were concerned with matters under the direct control of the Central Government. Apart from the Central Secretariat, the most important of these services are Railway Service, Indian Posts and Telegraphs Service, and the Customs Service. Till 1937 some of the posts in other services were filled by the Secretary of State. Now all members are appointed and controlled by the Government of India. Recruitment is made by competitive examination held by the Public Service Commission.

### THE STATE SERVICES

The State Services cover the whole field of civil administration. Appointments to these services are made by the State Governments from the list of candidates supplied by the State Public Service Commissions. The terms of service, the grades and salaries are all well defined and ascertained.

## GROWTH OF LOCAL SELF-GOVERNMENT

The earliest essays in municipal government in India were in the Presidency towns of Madras, Calcutta and

BEGINNINGS OF MUNICIPAL GOVERNMENT.

Bombay. An order of the Court of Directors in 1687 enjoined the

formation of a corporation composed of European and Indian members of the City of Madras. This corporation did not survive. Under the Regulating Act, 1773, the Governor-General nominated the covenanted servants of the Company and other British inhabitants to be Justices of the Peace. They were empowered to appoint scavengers for the cleansing of the streets of Calcutta, Madras and Bombay, to order the watching and repairing of the streets, to make assessments for these purposes and to grant licences for the sale of spirituous liquors. After several intermediate Acts, the municipal constitutions of the three Presidency towns were entirely remodelled by a series of Acts. In 1856, a body corporate was established in Presidency towns under the style of Municipal Commissioners, composed of three salaried members of whom one was to be president. Except in Bombay, all the Commissioners were appointed by the Governor. In Bombay the president alone was appointed by the Government while the two other Commissioners were appointed by the Justices of the Peace. To these bodies large powers of assessing and collecting rates and of executing works of conservancy and general improvement were entrusted. Up to 1860, the three Presidency towns had been substantially subject to a uniform system of municipal administration. But henceforth the system diverged in accordance with the provincial legislative indepen-

dence restored in 1861. The Calcutta Municipality was remodelled by the Bengal legislature in 1863 and again in 1876. The Bombay Municipality was remodelled by the Bombay legislature in 1865 and again in 1872. The Madras Municipality was remodelled by the Madras legislature in 1867 and again in 1876.

Outside the Presidency towns there was practically no attempt at municipal legislation before 1842. An Act passed in that year for Bengal, which was practically inoperative, was followed in 1850 by an Act applying to the whole of British India. Under this Act and subsequent Provincial Acts a large number of municipalities were formed in all Provinces. These Acts provided for the appointment of Commissioners to manage municipal affairs and authorized the levy of various taxes. But in most Provinces the Commissioners were nominated, and from the point of view of self-government these Acts did not proceed far. It was only after 1870 that progress was made in self-government. Lord Mayo's Government, in their Resolution of 1870 introducing the system of provincial

LORD MAYO'S RESOLUTION, 1870.

finance, referred to the necessity of taking further steps to bring local interest and supervision to bear on the management of funds devoted to education, sanitation, medical charity and local public works. New Municipal Acts were passed for the various Provinces between 1871 and 1874, which, among other things, extended the elective principle, but only in the Central Provinces was popular representation generally and successfully introduced.

The Resolution of Lord Ripon's Government in 1881-82 is a very important landmark in the growth

LORD RIPON'S RESOLUTION, 1881.

of local self-government in India.

In accordance with this, orders

were issued which had the effect

of greatly extending the principle of local self-government. The existing local committees were to be replaced by a system of Boards extending all over the country. The lowest administrative unit was to be small enough to secure local knowledge and interest on the part of each member of the Board, and the various minor Boards of the districts were to be under the control of a general District Board and to send delegates to the district council for the settlement of measures common to all. The non-official element was to preponderate, and the elective principle was to be recognized, while the resources and financial responsibilities of the Boards were to be increased by transferring items of provincial revenue and expenditure. The Resolution advocated the establishment of a network of local self-government institutions specially to meet the needs of rural areas, the reduction of the official element in local bodies to not more than a third of the whole, and the exercise of control from without and not from within, a large measure of financial decentralization, and the adoption of election as a means of constituting local bodies wherever possible. While insisting on a unity in aim, it favoured a variety in forms to suit divergent conditions. The outcome was a series of Provincial Acts providing for the election of members of municipal bodies to the number of half or more in each case, and for the grant to many of them of the privilege of electing their chairman or vice-chairman. Provinces proceeded to develop on their own lines in accordance with local conditions. But despite the variety in



details, there was in all Provinces a substantial agreement as to the general line of the development of rural local self-government. In all rural boards taxpayers were empowered to elect a proportion of their members, and in some to elect their presidents. In the large majority of these the District Officer continued to be chairman in charge of the executive control till 1918. In spite of this Resolution, owing to the all-pervasive official control in practice, the inadequacy of financial resources and the general indifference of the people, no real and substantial progress was made in the art of local self-government. In the vast majority of districts, local government continued to be one of the many functions of the District Officer. No real attempt was made to inaugurate a separate system amenable to the will of local inhabitants. In many towns the municipalities continued to confine their activities to approving the decisions of the official chairman; where the duties were entrusted to the vice-chairman he merely followed the instructions of the official. In the words of the Report of the Simon Commission: "In effect, outside a few municipalities, there was in India nothing that we should recognize as local self-government of the British type, before the era of Reforms."

After the ultimate aim of British rule in India was laid down in the Declaration of August 20, 1917, the Executive Government made substantial efforts to arouse local institutions from their slumber. In 1918,

LORD CHELMSFORD'S  
RESOLUTION OF 1918.

Lord Chelmsford's Government issued an important Resolution whose basic principle was that "Responsible institutions will not be stably rooted until they are broad-based and that the best school of political education is

the intelligent exercise of the vote and the efficient use of administrative power in the field of local self-government." It affirmed that the general policy should be one of gradually removing all unnecessary control and differentiating between the spheres of action appropriate for governmental and for local institutions. It formulated certain principles calculated to establish, wherever possible, complete popular control over local bodies. It suggested an elected majority in all local boards, the replacement of official chairmen by elected non-officials in municipalities and where possible in rural bodies, the lowering of the franchise to an extent to make constituencies really representative of taxpayers, and the representation of minorities by nomination. The Decentralization Commission of 1908 had pointed out the advisability of fostering village government. The Government of India had laid down certain guiding principles for the purpose, but no action was taken. The Resolution of 1918 laid fresh emphasis on the advisability of developing the corporate life of the village as a step in the growth of self-governing institutions by taking advantage of the existing bonds of common civic interest and common traditions. The immediate action taken on this Resolution was to relieve the District Officer of his duty as a chairman of the District Board in all Provinces except in the Punjab.

The Montagu-Chelmsford Report recognized the defects of the system and stated that the educative principle was subordinated throughout to the desire for immediate results. It also insisted on the invaluable training which the exercise of local self-government affords to the citizens. The authors of the Report laid down a definite formula that there should be as far as possible complete popular control in local bodies

and the largest possible independence for them of outside control.

All the institutions of local self-government in India derived new life from the introduction of the constitutional reforms. Under the Act of 1918, local self-government was transferred to Ministers who

LOCAL SELF-GOVERNMENT  
AFTER THE REFORMS OF  
1919.

became responsible to the Legislatures for the development of local bodies. In almost every Province the Legislature used its powers in the endeavour to make local bodies a more effective training-ground for larger and wider political responsibility. The general trend of these Acts was the same. Almost all aimed at lowering the franchise, increasing the elected element to the extent of making it the immediate arbiter of policy in local affairs, and at passing executive direction into non-official hands and organizing village self-government. In short, these Acts aimed at freeing these bodies from official control and making them responsible to a substantially enlarged electorate.

In giving effect to the objective of the Montford Reforms various Provincial Governments widened the franchise for the election of the members for municipalities and local bodies and made provision for liberal grants to them, but the expectations for the growth of self-government were not realized, as active civic sense amongst the citizens was absent and the funds available for the work of these institutions, particularly in the rural areas, were not adequate.

After 1937 some progress particularly in the work of Village Panchayats was made, but it was not as much as was expected by the framers of the Constitution Act of 1935.

## CHAPTER VIII

### THE INDIAN STATES

Before August 15, 1947, in its political structure India was divided into British India and Indian States. Thus politically there were two Indias. One was British India, comprising Governors' Provinces and Chief Commissioners' Provinces covering about 820,000 square miles, or 60 per cent of the total area, with a population of 260 millions, or 77 per cent of the total population, and was under the sovereignty of the British Crown. The other India—Indian India—comprised Indian States covering about 700,000 square miles, or 40 per cent of the total area, and a population of 80 millions, or about 23 per cent of the total population. It consisted of about 562 units which were not British territories and whose subjects were not British subjects. They were ruled by hereditary princes or chiefs. These native States included 109 States, among them great States like Hyderabad, Mysore, Baroda, Kashmir, Gwalior and Travancore, the rulers of which were entitled to a seat in the Chamber of Princes; 126 which were represented in the Chamber by twelve members of their own order elected by themselves; and some 300 States, *jagirs* and others which were only States in the sense that their territories, sometimes consisting only of a few acres, did not form part of British India. The important States enjoyed within their own territories all the principal attributes of sovereignty, but their external relations were in the hands of the paramount power (the British

Crown). The sovereignty of others was of a more restricted kind, over some the paramount power exercised, in varying degree, administrative control.

The structure and the government of States presented a large variety. As regards their constitutional development the Butler Committee stated: "Of all the 108 Princes in class one, thirty have established Legislative Councils, most of which are at present of a consulting nature only. Forty have constituted High Courts more or less on British India models; thirty-four have separated executive from judiciary functions, fifty-six have a fixed Privy Purse, forty-six have started a regular civil list, fifty-four have bonus or provident fund schemes. Some of these reforms are still inchoate or are on paper and some are still backward, but the sense of responsibility to their subjects is spreading in all respects and growing year by year."

Under the Constitution Act of 1935, provision was made for establishing a constitutional relationship between the British India Provinces and the Indian States. The whole scheme of the Constitution relating to the accession of States to the Federation was based on a definite legal and constitutional theory. The Constitution recognized and legalized what was considered to be the then existing constitutional and legal status of the States in relation to the British Crown and to British India.

In the States the British Crown exercised paramountcy. Paramountcy or suzerainty denoted the relationship which existed between the Crown and the States. Its nature, scope and implications had never been accurately defined and its extent and application varied according to the exigencies of the time.

The rulers of the native States did not accede to

the Federation embodied in the Constitution Act of 1935, and thus no constitutional relationship between British India and the Indian States was established. The governments of these native States before August 15, 1947, were autocratic. British India was under the sovereignty of the British Crown, while the Indian States were under the suzerainty of the British Crown. On August 15, 1947, British India became independent as a Dominion within the British Commonwealth of Nations with a right to sever that connection if she desired to do so. The suzerainty or paramountcy of the British Crown over the Indian States lapsed on that date, and these States became independent, free to accede to the Dominion of India or to the Dominion of Pakistan. Geography and the new forces which came into existence by the operation of democratic factors in the country compelled these States to accede to the Dominion of India, except for half a dozen of them which acceded to the Dominion of Pakistan. For the first time after hundreds of years India became welded into a political and constitutional unity. The States acceded to the Dominion of India with respect to three subjects, defence, external affairs and communications. After their accession the same democratic factors generated a movement which involved two-fold integration: external integration, *i.e.*, the consolidation of small states into viable administrative units, and internal integration, *i.e.*, the beginning of democratic institutions and responsible government in the States. A large number of these States have been integrated with the neighbouring Provinces, and several others have been grouped together to form a self-contained unit. The process of integration began in December 1947 with the Orissa Feudatory



States, which ceded all governmental powers to the Dominion of India from January 1, 1948. It spread to the Kathiawar States which, instead of merging into neighbouring Provinces, grouped themselves into the United States of Saurashtra. Thereafter other States grouped themselves into other units—Madhya Bharat, Rajasthan and Vindhya Pradesh. Some States in Northern India grouped themselves into Himachal Pradesh. Travancore and Cochin became one State. Some States became Chief Commissioners' Provinces. As a result of this two-fold integration the number of Indian States Units has been reduced from 562 to 16 (nine are mentioned in Part B and seven in Part C of the First Schedule to the Constitution of 1949.) The simultaneous achievement within less than two years of integrating the States and reducing the number of units, and also securing the beginnings of responsible government in almost all the States, is without parallel in the whole constitutional history of the world. This great achievement was mainly the result of the constructive statesmanship of Sardar Vallabhbhai Patel. The result is that the Constitution which has been drawn up is for units which are more or less similar in their status and character. So far as the Indian States are concerned there has been a great revolution both in their status and character and their internal structure, and they have been fitted into the political structure of India like the Provinces now called States, with a view to achieving the unity of India and the welfare of India's people.

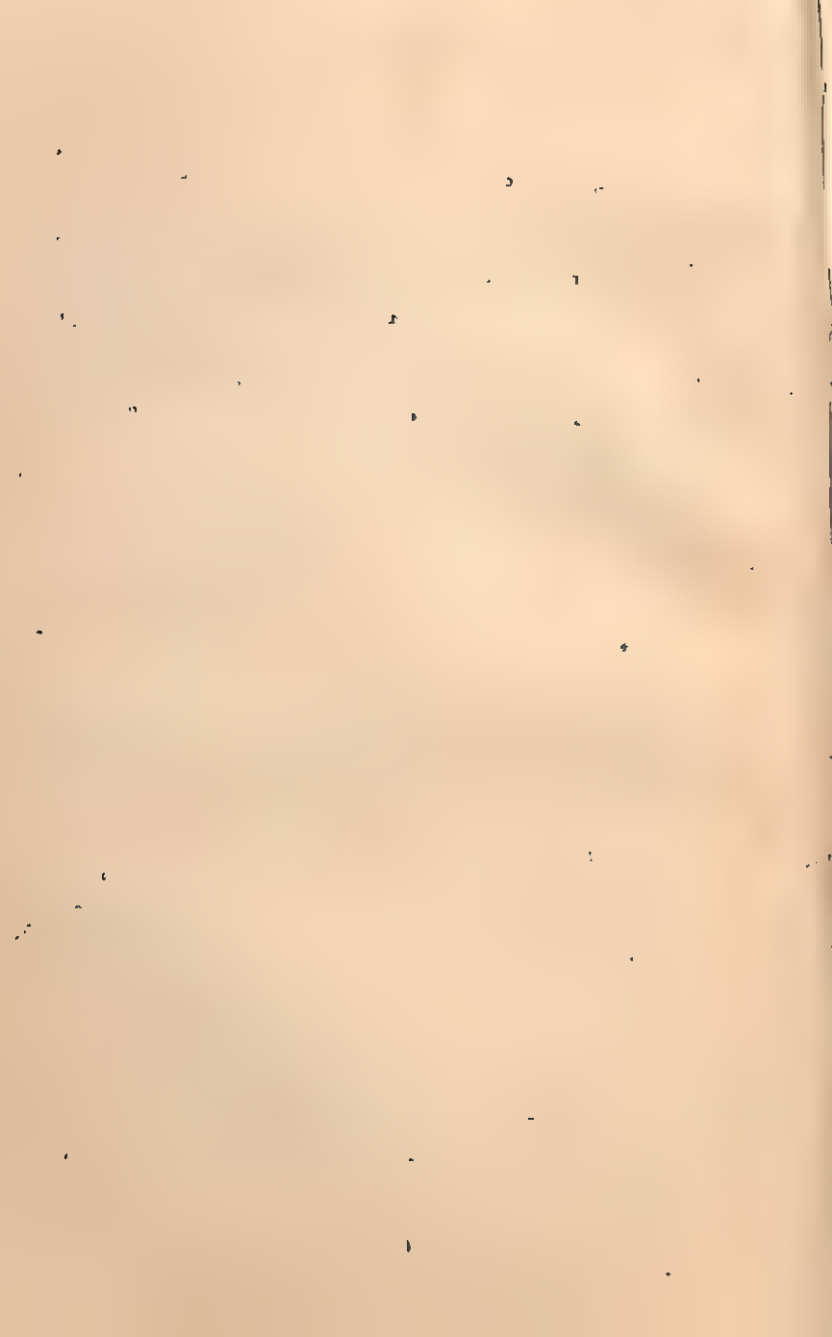
The native States of India have been liquidated and their rulers have remained only nominal rulers with guaranteed Privy Purses and assured personal rights and dignities. They have become an integral part of

Indian polity, and those which have become Part B States are governed in the same manner as Part A States, while those which have become Part C States are for the time being governed on a basis of limited representative government. The liquidation of autocratic rule and the substitution of responsible government over such a large area within less than three years is an achievement of which India's statesmen and her people have every reason to be proud.

## **Section II**

### **THE CONSTITUTION OF INDIA**

The Constitution of India which is devised by Indians is designed to serve the needs of India and to meet the particular characteristics and genius of the Indian people.



## Part I

### GENERAL

#### CHAPTER I

#### FEDERALISM IN INDIA

A Constitution is a written document which contains the fundamental law of the country by which the people have agreed to be governed. Each country has adopted the Constitution which is most suitable to meet its particular needs. It means the definition of the supreme power in the State. It defines and deals with the organs of that power—the Legislature, the Executive, and the judiciary, and their relations to each other. It also deals with the fundamental rights of the citizens. It contains provisions for the amendment of the Constitution.

A Constitution may be unitary or federal. If there is concentration of authority or supreme power in one unit or body, it is called unitary; if the authority is distributed between two or more units or bodies, it is called federal. In other words, in a unitary Constitution supreme authority is concentrated, whilst in a federal Constitution it is distributed. A Constitution may be either flexible or rigid. A Constitution is called flexible when it can be amended by the Legislature by the same process as any other law, and rigid when it requires a special process for its amendment. The Indian Constitution is federal and rigid. As it is federal, it is necessary to state briefly the theory of a federal polity.

According to Professor A. V. Dicey, a federal State requires for its formation two conditions. There must

CONDITIONS AND AIMS  
OF FEDERATION.

exist a body of States so closely connected by locality, by history, by race, or the like, as to be capable of bearing, in the eyes of their inhabitants, an impress of common nationality. The second condition is the existence of a very peculiar state of sentiment among the inhabitants of the States which it is proposed to unite. The States must desire union, but must not desire unity. The sentiment which creates a federal State is the prevalence throughout the citizens of the States of two apparently inconsistent feelings—the desire for national unity and the determination to maintain the independence of each State. “The aim of federation is to give effect, as far as possible, to both these sentiments.”

A federation is a union of political units (States) formed mainly for the purpose of performing certain functions on behalf of all. A federal union means the coming together of independent States which, while preserving their separate identities, look to the Centre to deal with matters common to them all. Thus a federation is essentially a result of an agreement or pact between the federating units to place in the hands of some central body duties and powers to be exercised by it on behalf of them all, while the constituent units retain unimpaired their autonomous authority in other respects. A federal State is thus a political contrivance intended to reconcile national unity and power with the maintenance of “States’ rights.” It is an organic union. A federal State is a distinct fact. The federating States also remain distinct facts. By the union of the States,

WHAT IS A FEDERATION?



a new organic State is created for the discharge of certain national functions. The federal State is the embodiment of the nation as a whole, and it has a direct and organic contact with the citizens of all the States, who are citizens of the federation and who thus owe a double allegiance—to their own States and to the federal State. The federal form of government came into existence where a unitary form of government was not possible owing to a strong sentiment of local patriotism. In a federal polity the powers of Government are divided between the government of the whole country and the governments of the units or States which constitute the federal polity, in such a way that each government is independent within its own sphere. The Government of the whole country has its own sphere of powers and it exercises them without any control from the Governments of the constituent units. The latter in their turn exercise their powers within their prescribed sphere without being controlled by the Central Government. Both the Legislature of the whole country and the Legislatures of the States have limited powers, and neither is subordinate to the other. Both are co-ordinate.

A study of modern federal systems reveals three leading characteristics of a federal Constitution. They are: (1) supremacy of the Constitution; (2) distribution of powers among bodies with limited and co-ordinate authority; and (3) authority of the Supreme Court to act as a custodian and interpreter of the Constitution.

As the basic principle of the structure of the present Constitution is the same as that of the Constitution Act of 1935, which for the first time introduced a federal polity in India, it is pertinent to ask how far the

conditions favourable to the formation of such a polity existed in India in 1935. It may be stated that some of these were then present, but the basic impulses to a federation were absent. For external purposes India was already one State, and for internal purposes also India—including both British India and the Indian States—was governed on a unitary basis. There were no independent States, as the Native States were not independent and the British Indian Provinces were not legal entities, but were mere administrative units. In all federations the initiative for union came from the constituent units which were moved thereto by their citizens. In India the impulse to federation came from the British Parliament, which persuaded the Princes to enter the federation as it had to grant some responsibility to India and at the same time it wanted to secure stabilizing elements in the Central Government and also to preserve paramountcy within a limited sphere in the Indian States. Thus, federation as embodied in the Constitution Act of 1935 was not the inevitable or logical outcome of the political evolution of India, but was brought into existence by the British Parliament to achieve definite objects. It is to be noted that the federal part of that Constitution as regards the Indian States did not come into operation at all and they remained under the suzerainty of the British Crown. The whole question assumed a new aspect on August 15, 1947, when under the Indian Independence Act, 1947, this suzerainty lapsed and the Indian States became independent and were at liberty to accede to the Dominion of India or to the Dominion of Pakistan. The Constituent Assembly was free to draw up the Constitution most suitable to the needs of India, but strangely enough, it accepted the basic

structure of the Constitution Act of 1935 even in the new context. This structure constitutes the framework of the present Constitution, though it has been modified and adapted to meet the new circumstances.

### SALIENT FEATURES OF THE INDIAN UNION (FEDERATION)

The Indian Union exhibits all the normal characteristics of a federation: a written Constitution, a dual polity and distribution of powers between the National Government and the State Governments, and a Supreme Court. But there are some peculiar features of the Indian federation resulting from the special political conditions of India and from the circumstances under which it was brought into existence. These features are:

(1) In all federations a number of independent political units are transformed into a single State for common purposes. Federalizing has normally been a process of uniting. In India, federalizing has been, in a sense, a process of breaking up. Till 1935 there had been one Central Government with other subordinate Governments. For the purpose of federalizing, it was broken up into eleven autonomous units. Even the Indian States had been under the suzerainty of the British Crown. So the federating units, which were all under the British Crown, had already been for external purposes one State. Thus the historical process of the formation of a federation for India had been just the reverse of what it had been in other countries, and the aims which brought other federations into existence had also not been operating in India. Other federations were formed by the component

units. The Indian federation under the Constitution Act of 1935 was created by the British Parliament. Thus the federation which was created in 1947 did not come into existence by the operation of the forces which operated in other countries. As the basis of the Constitution Act of 1935 was federal and as British India was being governed on a federal basis till 1947, the Constituent Assembly merely modified and adapted the federal structure embodied in the 1935 Act.

(2) Generally, under a federal government, there is a double citizenship: a citizenship of the union as a whole and a citizenship of each constituent State. But the Indian federation is a dual polity with a single citizenship. There is only one citizenship for the whole of India: the Union citizenship. Every Indian has the same rights of citizenship, no matter in which State he resides.

(3) In most federations certain powers are assigned either to the States or to the federal government, and the residuary power is given to the former or the latter, as the case may be. In the Indian federation the powers of both the federal government and the State governments are specifically enumerated in three exhaustive legislative lists—a phenomenon unique in the history of federal Constitutions—and the residuary power is assigned to the Centre. Though federal in form, the Indian Constitution, unlike other federal Constitutions, is both unitary as well as federal according to the requirements of the time and the circumstances. It is designed to work as a federal government in normal times, but as a unitary government in times of emergency. Once the President issues a Proclamation of Emergency, which he is authorized to do, the whole system becomes transformed into a unitary

system. In other federations there is no such power of converting the federal State into a unitary State. This special trait of the Indian federation is the result of her political needs.

(4) The Union and the State Governments are each organized separately and independently for the performance of their functions, whether Legislative, Executive or judicial. But, though they are thus separately organized, they are integrated and function as one whole.

(5) In other federations the Upper Chamber generally secures the equality of status of the federating units by allowing equal representation in it of all units irrespective of their size and population. The Lower Chamber secures the unity of the federal State. Its representatives are elected by the citizens of the federating units as a whole. In the Indian Union the principle of equality of representation of the units of the Upper Chamber is not observed, as the representation in that Chamber is not on the basis of equal representation of all units irrespective of their size and population, but is based on the population of each State.

(6) Unlike other federations, the Indian federation consists of constituent units, all of whom are not of the same status and character. Part C States are mostly administrative units and are under the direct control of the Centre.

(7) The Executive head of the American federation is elected by the people; the Executive head of Canada and Australia is appointed by the British Crown on the advice of the Dominion Ministry; whereas the Executive head of the Indian federation is elected by the Union Parliament and the State Legislatures. The Executive head of none of the other federations has

distinct legislative powers, while the Executive head of the Indian federation has specific legislative powers.

(8) A federation, being a dual polity based on divided authority with separate Legislative, Executive and judicial powers for each of the two polities, is bound to produce diversity in laws, in administration and in judicial protection. The Indian Constitution has provided means whereby the Indian federation has secured uniformity in all matters which are essential to the unity of the country. These means are: (i) a single judiciary, (ii) uniformity in fundamental laws—civil and criminal, and (iii) a common All-India Civil Service for the Union and the States for important posts. The Indian Union, though a dual polity, has no dual judiciary. The Supreme Court and the High Courts form one single integrated judiciary having jurisdiction and providing remedies in all cases, whereas in the United States of America there is a double chain of Courts, one to administer Union Laws and one to administer State Laws.

(9) Of all the federal Constitutions in the world, the Indian federation is the least rigid. Except for a few Articles, which are vital to the federal polity, the amendment of the rest of the Constitution can be carried out by Parliament, provided it receives the approval of an absolute majority of the membership of each House and a two-thirds majority of those present and voting. For the specified Articles which deal with the division of powers, etc., an extra safeguard is provided, as their amendment requires the concurrence of the Legislatures of at least half the States. Thus the Indian Constitution is reasonably flexible.

These, then, are some of the special features of the Indian Union. It both resembles, and differs from,



other federations. It may correctly be described as a quasi-federation with many elements of unitariness.

The framers of the Constitution were fully conscious of the fact that in the past disruptive forces had been very strong in India. The necessity for guarding against disintegrating or fissiparous tendencies is recognized in the new polity, and the distribution of powers between the Union and the States is designed to avoid these dangers and evils. The President is empowered to take measures to avoid any difficulties of this kind. The framers of the Constitution have drawn upon the experience of the working of other Constitutions and have modified some of the general principles of a federal polity to meet the peculiar needs and conditions of India. The Constitution is sufficiently elastic for adaptation to India's changing and growing needs.

The Constitution establishes both at the Centre and in the States a Parliamentary Executive—a form of government called Cabinet government or responsible government. The ultimate responsibility of the Executive to the electorate through the Legislature is clearly established in relation to the Union Government as well as to each State Government. The Cabinet—the Council of Ministers—composed of members of the Legislature, hold their position by virtue of, and contingent upon, the retention of the confidence of the Legislature and are therefore practically directly responsible to the Legislature. In the United Kingdom responsible Government is a matter of convention, whereas in the Indian Constitution responsible Government, both in the Union and in the States, is provided for by the Constitution itself. Another feature which

is to be emphasized is that, as in all modern Constitutions, there is separation of the governmental functions assigned to the different branches of government, the Legislature, the Executive and the judiciary, but there is no rigid separation of powers. The real Executive consists of persons who are members of the Legislature, this being the essential feature of a Parliamentary Executive. But the judiciary is made independent of the Executive to a large extent, with a view to securing its integrity and independence, as it has to construe and interpret and enforce the Constitution, the supreme law of the country.

#### WHAT THE CONSTITUTION CONTAINS

The Indian Constitution is the longest and the most complex Constitution in the world. It begins with a Preamble which states the basic objects which the Constitution and the government established by it are to achieve and realize—the purposes for which the Republic is established. It describes the nature of the Indian Union, its constituent units and their territories. It defines citizenship at the commencement of the Constitution. It contains a comprehensive list of the fundamental rights and also a list of directive principles of social policy intended for the general guidance of the Legislature and the Executive. It comprises the Constitution of the Union as well as the Constitutions of the States comprising the Union. Hence we have to deal with the three branches of Government—the Executive, the Legislative and the judiciary, both at the Centre and in the States—and the distribution of the legislative powers and the taxing powers between the Union and the States, as well as the provisions regarding administrative relations bet-

ween them. It makes provision for elections, public services, special interests of certain classes and emergency. It provides for the official language of the Union and the States and lays down the process for the amendment of the Constitution. We have to study all these subjects and other subjects which are incidental to the governmental organization both at the Centre and in the States.

## CHAPTER II

### THE AIMS AND OBJECTIVES OF THE INDIAN CONSTITUTION

The basic aims and objectives of the Constitution are stated in the Preamble and are enlarged upon in the Directive Principles of Social Policy which indicate the ideals to be achieved. The Constitution also aims at the establishment of the democratic method of government and rule of law with the avowed object of enabling every citizen to develop and enrich his personality. Let us see what the Preamble states:

#### THE PREAMBLE

"We, the People of India, having solemnly resolved to constitute India into a Sovereign Democratic Republic and to secure to all its citizens:

Justice, social, economic and political;

Liberty of thought, expression, belief, faith and worship;

Equality of status and of opportunity; and to promote among them all

Fraternity assuring the dignity of the individual and the unity of the Nation;

In our Constituent Assembly this twenty-sixth day of November, 1949, do hereby adopt, enact and give to ourselves this Constitution."

This Preamble, which "walks before" the Constitution indicates the source from which the Constitution springs and from which it claims its sanction. This source is the people of India. It recites the basic

objects which the Constitution and the Government established by it are to achieve and realize—justice, liberty, equality, fraternity and national unity. The Preamble also indicates the democratic basis of the Constitution. The emphasis on “the people” indicates the democratic origin of the Union and foreshadows the nature of the Constitution.

### DIRECTIVE PRINCIPLES OF SOCIAL POLICY

The Constitution has a novel feature in so far as it lays down the directive principles of State policy. These principles are not enforceable in the Courts. They merely give an indication of the policy which the Union and the States are to follow. They are principles of guidance to the Legislature and the Executive. The general duty of the State is defined thus: “The State shall strive to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice, social, economic and political, shall inform all the institutions of national life.” With this object the State is specifically required to ensure for its people: (1) adequate means of livelihood, (2) fair distribution of wealth, (3) equal pay for equal work, (4) protection of child and adult labour, (5) employment, (6) free and compulsory education for children up to the age of fourteen, (7) public assistance in the event of unemployment, old age, disability and other cases of undeserved want, (8) a living wage, (9) proper conditions of work, (10) a decent standard of life, (11) full enjoyment of leisure and social and cultural opportunities, and (12) the raising of the level of nutrition and improvement of health. Special emphasis is laid on the promotion of the educational and economic interests of the Scheduled Castes

and Scheduled Tribes and other backward sections of the community. The other directives to the State are for the organization of Village Panchayats, uniform civil code for all citizens, prohibition of the sale and consumption of alcohol, organization of agricultural and animal husbandry, prohibition of the slaughter of useful cattle, especially milch and draught cattle and their young ones, protection, preservation and maintenance of monuments and places and objects of national and historical importance, and separation of the judiciary from the Executive. There is also a directive that India should promote national peace and security, maintain just and honourable relations with nations, foster respect for international law and treaty obligations and encourage the settlement of international disputes by arbitration.

All these directives constitute a very comprehensive political, social and economic manifesto or programme of a modern democratic State. As such they evoke the respect and affection of the people and arouse their hopes of a better social and economic order. They are meant to generate a favourable atmosphere for the growth of the democratic Republic.

The Preamble and the Directive Principles are not legal rules and cannot be enforced in courts of law.



## CHAPTER III

### THE UNION AND ITS TERRITORY

What is India? India, that is Bharat, is a Union of twenty-seven States. It comprises the territories of these States and the territories of the Andaman and Nicobar Islands. These twenty-seven States are specified in Parts A, B and C in the First Schedule to the Constitution. They are called Part A States, Part B States and Part C States. Part A States are Assam, Bihar, Bombay, Madhya Pradesh, Madras, Orissa, Punjab, Uttar Pradesh and West Bengal. These States were formerly Provinces of British India. Part B States are Hyderabad, Jammu and Kashmir, Madhya Bharat, Mysore, Patiala and East Punjab States Union, Rajasthan, Saurashtra, Travancore-Cochin. These States were formerly Indian States. Part C States are Ajmer, Bhopal, Bilaspur, Coorg, Delhi, Himachal Pradesh, Kutch, Manipur, Tripura and Vindhya Pradesh. All these States are united into a federation called the Indian Union which is organic and indissoluble. Provision is also made to render possible the enlargement of the territory of the Union and also the establishment of new States. Parliament may, by law, admit new States into the Union or establish new States on such terms and conditions as it thinks fit.

As the existing States (formerly known as Provinces) were formed during the course of British administration for the sake of mere administrative convenience and not on any scientific, linguistic or ethnological

basis, provision is made for the alteration of the areas, boundaries or names of the existing States. Parliament may by law form a new State by separation of territory from any State or by uniting two or more States; increase or diminish the area of any State; alter the boundaries or the name of any State. But this can be done only by the prescribed method and on the fulfilment of certain conditions. A Bill for this purpose cannot be introduced in either House of Parliament, except on the recommendation of the President, and if the Bill affects the boundaries or name of any Part A or Part B State, the views of the Legislature of the State or of each of the States both with respect to the proposal to introduce the Bill and its contents have to be ascertained by the President before he recommends the Bill. Having regard to the peculiar conditions under which the States (original Provinces) were formed and their boundaries were defined, this provision in the Constitution of India is not only expedient but is also necessary in the interests of the States themselves and for the country as a whole. It is to be used for reconstructing some of the existing States on a linguistic basis. A law for the establishment of new States or the alteration of the areas, boundaries or names of any existing States is to contain all consequential provisions and is not to be deemed as an amendment of the Constitution. But it is to be passed by Parliament by the prescribed method.

### CITIZENSHIP

A State comprises two classes of members. Firstly, all those who by virtue of their personal and permanent relationship to the State are its citizens. Secondly,

all those who are, for the time being, residing within its territory. Both classes of members have claims to the protection of the laws and Government of the State, and to such laws and Government both alike owe obedience. But citizens by reason of their personal and permanent relationship to the State possess superior privileges and receive from the State special rights and honours, and owe allegiance, or a special duty of assistance, fidelity and obedience. They are the nationals of the State. The relation between the State and its citizens is one of reciprocal obligation. The State protects the citizens, who in turn owe allegiance to it and are liable to public duties and services in the interests of the State. Citizenship and nationality are almost identical, hence citizenship depends upon the law of nationality.

It is important to note that though India is a federation there is no dual citizenship such as is a common feature of other federations. There is a single citizenship—and that is Indian citizenship. The rights, privileges and obligations of the citizens are the same for all citizens throughout India.

The Constitution defines only citizenship at the commencement of the Constitution, when three categories of persons are recognized as citizens of India. The first category comprises those who are domiciled in India. Every person who has his domicile in the territory of India at the commencement of the Constitution, and who or either of whose parents was born in the territory of India, or who has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement, is a citizen of India. Thus, there is a threefold basis for citizenship, *viz.*, birth, descent and residence. The second

category comprises those who have migrated to India from Pakistan under permanent permits granted to them by the Indian authorities. Displaced persons from Pakistan are to be deemed to be citizens at the commencement of the Constitution if (i) they or either of their parents or any of their grandparents were born in India before partition; (ii) they (in the case of those who migrated before July 1948) have been ordinarily resident in the territory of India since the date of their migration; and (iii) they (in the case of those who migrated in or after July 1948) were registered as citizens of India on application made by them before competent authorities. These provisions are made to enable persons migrating from Pakistan, as a result of the partition, to retain their Indian citizenship. The third category comprises Indians who are settled abroad. As there are many of these, provision is made for the rights of citizenship of such persons of Indian origin residing outside India. This category includes all those who or either of whose parents or grandparents were born in undivided India, and who registered themselves as citizens of India through India's diplomatic or consular representatives abroad.

The acquisition and termination of citizenship and all other matters relating to it are to be regulated by law of Parliament. Three years have passed since the Constitution came into force, but no law of nationality has yet been enacted.

The significance of Indian citizenship lies in the fact that citizens are a class of persons who alone are entitled to its privileges and are subject to its obligations. These privileges comprise the civic and national rights generally inherent in modern citizenship. Their allegiance, on the other hand, imposes on them an inherent

obligation to abstain from treasonable acts and to do positive duties such as military service. It may also be noted that citizens are entitled to, and are secured, all fundamental rights, whilst only some of these rights are available to those who are residing in India but who are not citizens.

## CHAPTER IV

### FUNDAMENTAL RIGHTS

#### GENERAL

The Constitution contains a comprehensive declaration of fundamental rights. The Indian Constitution is that of a democratic Republic. For its effective working, certain fundamental rights of the citizens are absolutely essential and indispensable. Democratic government in modern times means government by the majority, which is willingly acquiesced in by the minority for the time being, with full freedom to the minority for the time being to persuade the citizens to change their views in its favour so that the minority may become a majority. As democracy is essentially government by opinion or persuasion, the means for the formation of public opinion and for persuasion must be secured to the citizens. Hence freedom of speech and assembly is essential. In order that the democratic principles may operate effectively, the citizens and particularly the minority require protection of their life, liberty and property, and free and full opportunity to assemble and express their opinion regarding public matters. Hence certain rights should be secured to them even against the majority by the fundamental law of the State. It is also felt that, having regard to the growing activity of the Legislature and Government, it is necessary to put some restrictions on their powers. Further, it is absolutely necessary to prevent transient majorities from interfering with the rights of individuals by the process of



ordinary legislation. It is to be noted that the State exists for the individuals or citizens, for securing their welfare and for the enrichment of their personality. To attain these objects, certain fundamental rights are declared and guaranteed to the individuals, as, without the protection of these rights, the democratic principle cannot operate and there is a danger of the tyranny of the majority and the unrestricted power of government. In effect these rights are restrictions on the powers of the Legislature and the Executive.

The fundamental rights which are declared and guaranteed are not absolute; they are qualified in order to secure the safety of the State. It is well accepted that the State exists for the individuals, but it is equally well accepted that when the State itself is in danger, internally and externally, the rights of the individuals should not obstruct the Government in taking any action necessary for the protection and safety of the State. The object of the insertion of fundamental rights in the Constitution is not to make them unalterable under any circumstances, but is only to invest them with higher legal sanction by making them an integral part of the fundamental law, so that they can neither be abridged nor taken away by the process of ordinary legislation by transient majorities which may use it to suit their own ends.

Mere declaration of fundamental rights in the Constitution is useless unless there is an effective and easy means provided for enforcing them. The Indian Constitution has declared and guaranteed the fundamental rights and has also provided a comprehensive, easy and effective machinery for their protection and enforcement by different kinds of processes if they are interfered with or encroached upon or violated.

The declaration of fundamental rights in the Indian Constitution is the most elaborate and comprehensive yet framed by any State. Its importance is fully recognized. Firstly, by defining "the State" very broadly, these rights are enforceable against the Government of India, Parliament, the Government and the Legislature of each State, and all local and other authorities within the territory of India and under the control of the Government of India. Some of these rights are also available against private persons. Secondly, the importance attached to the fundamental rights is so great that it is provided that all laws in force in the territory of India immediately before the commencement of the Constitution, in so far as they are inconsistent with the fundamental rights, are, to the extent of such inconsistency, void. "Law" as used here includes "custom" and "usage" as well as "rule" and "regulation." Thirdly, the State is prohibited from making any law which abridges or takes away these fundamental rights, and any law made in contravention of this provision is, to the extent of the contravention, void.

The fundamental rights inserted in the Constitution are of two types. First, there are the guaranteed fundamental rights which are found in many written Constitutions. Secondly, there are those which are peculiar to India, arising from social divisions resulting from castes and creeds. Most of these rights are restrictions on legislative and executive powers and in few cases on judicial power. All these fundamental rights are grouped under seven categories: (1) right to equality, (2) right to freedom (of different kinds), (3) right against exploitation, (4) right to freedom of religion, (5) cultural and educational rights, (6) right to property and (7) right to constitutional remedies. Some

of these rights are given to citizens only, while some are available to all persons, whether they are citizens or not.<sup>1</sup>

### (1)<sup>o</sup> RIGHT TO EQUALITY

The equality secured to citizens is equality before the law, social equality, and equality of opportunity in public employment.

The State is not to deny to any person equality before the law or the equal protection of the laws within the territory of India. This right to equality before the law means the supremacy of law or the rule of law. It does not mean that every person shall be treated alike. It means the equal subjection of all persons to the ordinary law of the land administered by the ordinary courts. It excludes arbitrariness on the part of the Executive. Secondly, no person is to be denied equal protection of the laws within the territory of India. This means that all persons shall be entitled to the protection of equal laws. It forbids discrimination between persons who are in substantially similar circumstances or conditions. Without violating this clause, persons may be classified into groups if there is a reasonable basis for such difference or distinc-

<sup>1</sup>The rights given to citizens only are : Prohibition of discrimination on grounds of religion, race, caste or sex, or place of birth; equality of opportunity in matters of public employment, freedom of speech, assembly and association, freedom to acquire property or to carry on any occupation, trade or business, right to move, to reside and settle in any part of the territory of India, the right to conserve a distinct language, script or culture, the protection of minority interests.

The rights which are available to all persons whether they are citizens or not are: Protection of life and personal liberty, equality before law, protection against *ex post facto* penalization, prohibition of slavery and enforced labour at employment, *viz.*, whether in mines and factories, freedom of conscience and the right to profess, practise and propagate any religion, and right to constitutional remedies.

tion, but the classification must not be merely arbitrary but based upon a difference which bears a just and proper relation to the classification.

As discrimination on grounds of religion, race, caste or sex or place of birth has been practised to some extent under the existing social system, provision is made to prevent it in future. The State is forbidden from discriminating against any citizen on the ground only of religion, race, caste, sex, place of birth or any of them. In particular no citizen shall on the ground only of religion, race, caste, sex, place of birth or any of them be subject to any disability or liability with regard to (a) access to shops, public restaurants, hotels and places of public entertainment,<sup>1</sup> (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public. But the State may make a special provision for women and children and for educationally or socially backward classes. It is further provided that there shall be equality of opportunity for all citizens in matters of employment under the Government. But the Legislature may prescribe in certain cases residential qualifications and may reserve some posts for backward classes who, in the opinion of the State, are not adequately represented in the services.

One of the outstanding evils of Hindu society has been "untouchability." Hence untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of untouchability is an offence punishable in accordance with

<sup>1</sup>This restriction is a general restriction. It imposes a duty on the owners. It vests a right in the citizen for the violation of which he can obtain redress by taking legal proceedings.

law. This is a very important provision for removing social disability and achieving social equality.

To establish the principle of equality, it is provided that no citizen of India is to accept any title from any sovereign of a foreign State. No person who is not a citizen of India shall, while he holds any office of profit or trust under the State, accept without the consent of the President any title from any foreign State. Further, no person holding office of profit under the State, without the consent of the President, can accept any present, emolument or office of any kind from or under any foreign State.

## (2) RIGHT TO FREEDOM

The right to freedom secures the usual liberties of an individual. A citizen has a guaranteed freedom of speech and expression, assembly, association, movement, residence, acquisition and disposition of property, and a right to practise any profession or to carry on any occupation, trade or business.

Citizens have the right (a) to freedom of speech and expression (including freedom of press), (b) to assemble peaceably and without arms, (c) to form associations or unions, (d) to move freely throughout the territory of India, (e) to reside and settle in any part of the territory of India, (f) to acquire, hold and dispose of property, and (g) to practise any profession, or to carry on any occupation, trade or business. But this freedom is not absolute but qualified. Thus, freedom of speech is limited by the power to make any law imposing reasonable restrictions on the exercise of the right, in the interest of the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of Court,

defamation or incitement to an offence. The right to assemble is limited by the power to make any law imposing, in the interest of public order, reasonable restrictions on the exercise of this right. The right to form associations or unions is limited by the power to make any law imposing, in the interest of public order or morality, reasonable restrictions on the exercise of the right. The right to free movement in India and to reside in any part of India is limited by the power to make a law imposing reasonable restrictions in the interest of the general public or the interest of a Scheduled Tribe. The right to acquire, hold and dispose of property is limited by the power to make a law imposing reasonable restrictions in the interest of the public. The right to practise any profession, etc., is limited by the power to make a law prescribing the requisite professional or technical qualifications and to allow State monopolies. The restrictions on the guaranteed rights, and the qualifications attached to them, are essential to secure effective government. Whether the restrictions imposed by law are reasonable or not, in the context, can be examined by the Courts.

These are freedoms which, with stated qualifications, hold good during normal times. In a crisis or emergency, when there is a Proclamation of Emergency, they may be abridged or suspended by the State for the period of the crisis or emergency in order to secure the safety of the State.

Rules forbidding retrospective criminal legislation and double punishment for the same offence, and protecting the right of an accused person not to be a witness against himself, are embodied in specific Articles of the Constitution.



The most cherished of all liberties—right to personal liberty—is specifically guaranteed. No person shall be deprived of his personal liberty

PROTECTION OF LIFE AND  
PERSONAL LIBERTY.

except according to procedure established by law. The right to personal liberty is not absolute but relative. All that is recognized is that a person can be deprived of his life or personal liberty only in accordance with the procedure established by law. He cannot be detained or put under physical restraint arbitrarily or illegally, *i.e.*, his liberty can be interfered with only in accordance with law. If he has violated or committed a breach of law, then also the interference must be in accordance with the procedure established by law. If a person is illegally arrested or detained, he or anybody can apply to a Court for the issue of a writ of *habeas corpus* (to produce his body, *i.e.*, bring him in person before a Court). On the return of that writ the Court can set the person at liberty if he is not legally detained. No person who is arrested is to be detained in custody without being informed, as soon as may be, of the grounds for such arrest, nor is he to be denied the right to consult, and to be defended by, a legal practitioner of his choice. As personal freedom is of supreme importance, provision is made that every person who is arrested and detained in custody is to be produced before the nearest magistrate within a period of twenty-four hours of such arrest, and no such person is to be detained in custody beyond the said period without the authority of a magistrate. But this provision does not apply to persons who are detained under any law for preventive detention. Parliament may make a law enabling the State to detain a person

for three months, and if he is to be detained for more than three months, it can only be done on the report of an Advisory Board. When a person is detained under the law for preventive detention, the authority making an order has to communicate to the person detained the grounds on which the order has been made and has to give him the earliest opportunity of making a representation against the order. The provision for preventive detention is very unusual, but safeguards are provided to secure justice to the person detained.

### (3) RIGHT AGAINST EXPLOITATION

The traffic in human beings and forced labour is prohibited. But this does not prevent the State from enforcing compulsory military training or industrial conscription. Thus, forced labour is made an offence, but compulsory service for public purposes is authorized. In requiring such service, the State may not discriminate on the ground of race, religion, caste or class. To protect the health of future citizens, the employment of children below the age of fourteen years for work in any factory or mine, or the engagement in any other hazardous employment, is prohibited. These restrictions on the traffic in human beings and on child labour impose duties not only on the State but also on private persons.

### (4) RIGHT TO FREEDOM OF RELIGION

The freedom of conscience is recognized, declared and guaranteed. The necessity of securing religious freedom in India, which consists of many communities, can hardly be exaggerated. But the right to freedom of conscience is not absolute, but is subject to public

order, morality and health. Subject to these and to other provisions in the Constitution, all persons are entitled to freedom of conscience and the right freely to profess, practise and propagate religion. It is further provided that every religious denomination or any section thereof shall have the right: (a) to establish and maintain institutions for religious and charitable purposes; (b) to manage its own affairs in matters of religion; (c) to own and acquire movable and immovable property; and (d) to administer such property in accordance with law. No person may be compelled to pay taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination. No religious instruction may be provided by the State in any educational institution maintained out of State funds. No person attending any educational institution, recognized by the State or receiving State aid, shall be required to take part in religious instruction or attend religious worship unless he or his guardian has given his consent. But a community or denomination may provide religious instruction for pupils of that community or denomination outside the school hours. These provisions are in conformity with the professed object of establishing a secular State.

#### (5) CULTURAL AND EDUCATIONAL RIGHTS

Any section of the citizens having a distinct language, script or culture shall have the right to conserve the same. A minority may not be discriminated against in regard to admission to educational institutions maintained by the State. The minority is, how-

ever, empowered to establish and administer its own schools, and in making grants the State may not discriminate on the ground that a school is managed by a minority.

## (6) RIGHT TO PROPERTY

The necessity for acquiring private property is recognized, but such an acquisition can be made only for public purposes and on the payment of compensation. It is provided that no person shall be deprived of his property save by authority of law. No property may be taken for public purposes except by a law which fixes the compensation or specifies the manner in which it is to be assessed and paid. Special provision for the acquisition of Zamindari and landed estates is made in the Constitution.

## (7) RIGHT TO CONSTITUTIONAL REMEDIES

A mere declaration of fundamental rights in the Constitution is useless unless there is an effective and easy method provided in the Constitution itself for enforcing them. The Constitution provides a comprehensive machinery for the enforcement of these rights if they are encroached upon or infringed. Whenever a fundamental right of a person is infringed, he can file a petition in the Supreme Court or in a High Court for the requisite relief. The remedies are orders or directions or writs<sup>1</sup> in the nature of *habeas corpus*, *man-*

<sup>1</sup>A writ means a legal instrument to enforce obedience to the orders of a Court.

(1) Habeas Corpus (You may have the body). This writ provides a remedy for a person wrongfully detained or restrained. It is addressed to him who detains another in custody requiring him to produce the detained person before the Court and

*damus*, prohibition, *quo warranto* and *certiorari*. The High Courts are also empowered to issue these orders, directions and writs. This is a very important and vital provision of the Constitution.

It is realized that though fundamental rights are of great importance to the citizens, the State has to abridge or suspend them in times of emergency in order to secure the safety of the State. This is recognized in the Constitution. The President has power, when he is satisfied that a grave emergency exists whereby the safety of India is threatened, whether by way of war or domestic disturbance, to issue a Proclamation of Emergency. This ceases to operate after six months unless, before the end of that period, it is approved by resolutions of both Houses of Parlia-

justify the detention. If there is no justifying or valid reason for detention, the Court immediately orders the release of the detained person.

- (2) *Mandamus* (We command). Its purpose is to enable a Court to compel a public body or a public official to do or not to do an act which it is incumbent on it or him to do or not to do. It is issued for the enforcement of a statutory duty or obligation.
- (3) *Prohibition*. This is a writ issued by a superior Court to an inferior Court or tribunal preventing it from acting without jurisdiction or in excess of jurisdiction.
- (4) *Certiorari* (To be more fully informed). This writ is issued by a superior Court to an inferior Court or tribunal requiring that the record of the proceedings in some matter pending before it should be transmitted before the superior Court to be there dealt with when the inferior Court is acting without or in excess of jurisdiction or in violation of the principles of natural justice. Prohibition differs from *Certiorari* only in fact that it can be brought at an earlier stage of the proceedings.
- (5) *Quo Warranto*. This writ is issued against him who claims or usurps any office to inquire by what authority he supports his claim in order to determine the right. In any case where any person acts in an office in which he is not entitled to act the Court may grant this writ restraining him from so acting.

ment. While it is in force, the executive power of the Union includes the power to give directions to the State, and the legislative power of the Union includes the power to enlarge its legislative power and to suspend the fundamental rights and the remedies available for their enforcement.

As the members of the Armed Forces and the Forces charged with the maintenance of public order have definite functions to perform, Parliament is given power to modify the fundamental rights in their application to them, and they may be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them. Provision is also made to indemnify persons who may have infringed the fundamental rights of the citizens in an emergency when martial law is declared.

It was feared that a detailed declaration of fundamental rights would make effective government difficult, but experience since 1950 has justified the faith placed in the judiciary by the framers of the Constitution. One may safely say that the judiciary has on the whole protected the rights of the citizens.



## PART II

### THE UNION

#### CHAPTER I

### THE UNION EXECUTIVE

#### THE PRESIDENT

The Union Executive is parliamentary. The executive head of the Union is the President. He acts on the advice of the Council of Ministers. This is Cabinet Government or Parliamentary Government of the British pattern.<sup>1</sup> The only difference is that the formal executive head of the United Kingdom is the Sovereign whose office is hereditary, whereas the formal executive head of the Union is the President, who is elected for a period of five years. Constitutionally in all respects the President is just like the constitutional head of the British democracy.

The Constitution provides that there shall be a President of India. The executive authority of the Union is vested in the President and it is exercised by him, aided and advised by the Council of Ministers, collectively responsible to the House of the People. The supreme command of the Defence Forces of the

<sup>1</sup>"Parliamentary Government, as it is understood in the United Kingdom, works by the interaction of four essential factors; the principle of majority rule; the willingness of the minority for the time being to accept the decisions of the majority; the existence of great political parties divided by broad issues of policy, rather than by sectional interests; and finally the existence of a mobile body of political opinion, owing no permanent allegiance to any party and therefore able, by its instinctive reaction against extravagant movements on one side or the other, to keep the vessel on an even keel." (Report of the Joint Select Committee on Indian Constitutional Reforms, para. 20.)

The Constitution postulates the existence of these factors in India.

Union is also vested in the President, and its exercise is regulated by law.

The President is elected by the members of the electoral college consisting of (a) elected members of both Houses of Parliament and (b) elected members of the Legislative Assemblies of the States. Thus

#### ELECTION OF THE PRESIDENT.

the President is elected by the representatives of the people, and the citizens play no direct part in his election. Since the State Legislatures have varying numbers of electors, it is provided that, as far as practicable, there shall be uniformity in the scale of representation of the different States at the election of the President. For the purpose of securing uniformity amongst the States *inter se* as well as the parity between the States as a whole and the Union, the number of votes which each elected member of the Legislative Assemblies of the States and of Parliament is entitled to cast is arrived at by formulae.<sup>1</sup> The result is:

All the members of the State Legislatures will together have a number of votes, a little more or less than one-thousandth of the people of the State, *i.e.*, the number of votes is proportional to the population. As each

<sup>1</sup>Each elected member of the Legislative Assembly of a State has as many votes as are obtained by the following formula:

Population of State

Number of elected members of the Legislative Assembly  $\times 1000$

In the resulting figure a decimal of five or more is to be counted as one.

Each elected member of the Union Legislature has as many votes as are obtained by the following formula:

The total number of votes capable of being cast by State Legislatures

The total number of members of State Legislature

In the resulting figure a decimal of five or more is to be counted as one

elected member of the State Legislature is given a number of votes, each member of the Union Legislature is also given a number of votes equal to the average of the numbers of votes assigned to a member of the State Legislature. The election of the President is to be held in accordance with the system of proportionate representation by means of a single transferable vote, and the voting for such election is by secret ballot.

The President holds office for a term of five years from the date on which he enters upon his office. He

TERM OF OFFICE OF  
THE PRESIDENT.

may, by writing under his hand addressed to the Vice-President, resign his office. Such resignation

is forthwith communicated by the Vice-President to the Speaker of the House of the People. The President may, for violation of the Constitution, be removed from the office by impeachment in the manner provided in the Constitution. Notwithstanding the expiration of his term, he continues to hold office until his successor enters upon his office. A person who holds or has held office as President is eligible for election to that office. In other words he may be re-elected.

To be eligible for election as President, a person must be qualified for election as a member of the

QUALIFICATIONS FOR  
ELECTION AS PRESIDENT.

House of the People. If a person holds any office of profit under the Government of India, or the

Government of any State, or local authority, he is not eligible for election as President.<sup>1</sup>

The President is not to be a member of either House of Parliament or of a House of any State Legislature and

<sup>1</sup>The President or the Vice-President of the Union, or the Governor or the Rajpramukh or Up-Rajpramukh of any State or Union or State Minister is not a person, who holds an office of profit.

if such a member is elected as President, he vacates his seat in the House on the date on which he enters upon his office as President. The President is not to hold any other office of profit. The President is entitled, without payment of rent, to the use of his official residences and is also entitled to such emoluments, allowances and privileges as may be fixed by the Parliament by law. The emoluments, allowances and the privileges of the President are not to be diminished during his term of office.

Every President and every person acting as President is, before entering upon his office, to make and subscribe in the presence of the Chief Justice of India, or in his absence the senior-most Judge of the Supreme Court available, an oath or affirmation in the prescribed form.<sup>1</sup>

When a President is to be impeached for violation of the Constitution, the charge is preferred by either House of Parliament. Such a charge can be preferred only if a resolution, after fourteen days' notice signed by not less than one-fourth of the total members of the House, is passed by a majority of not less than two-thirds of the total members of the House. When a charge has been so preferred by either House of Parliament, the other House investigates the charge or causes the charge to be investigated. The President has a right to appear and to be represented at such investigation. If as a result of the investigation, a resolution is passed by a majority of not less than two-thirds

<sup>1</sup>"I.....do swear in the name of God  
solemnly affirm that I shall  
faithfully execute the office of President (or discharge the functions of the  
President) of India and will, to the best of my ability, preserve, protect  
and defend the Constitution and the law, and that I will devote myself  
to the service and well-being of the people of India."

of the total membership of the House which investigated the charge, declaring that the charge has been sustained; such resolution has an effect of removing the President from his office from the date on which such resolution is passed. The President continues to function as President during the period of investigation. The new President is to be elected before the expiration of the President's term of office. An election to fill a vacancy in the office of President occurring by reason of his death, resignation, removal, or otherwise, is to be held as soon as possible after, and in no case later than six months after, the occurrence of the vacancy. The person elected to fill the vacancy is entitled to hold office for the full term of five years from the date on which he enters upon his office.

The President is the head of the State and as such he has the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence

(a) in all cases if the punishment or sentence is by Court-Martial,

(b) in all cases where the punishment or sentence is for an offence against Union Law,

(c) in all cases where the sentence is a sentence of death.

### THE VICE-PRESIDENT

The Constitution provides that there shall be a Vice-President of India. He is *ex-officio* Chairman of the Council of States. He is not to hold any other office of profit. When he acts as President or discharges the functions of the President, he is not to perform the duties of the Chairman of the Council of States and is not entitled to any salary or allowance

payable to the Chairman of the Council of States. In the event of the occurrence of any vacancy in the office of the President by reason of his death, resignation or removal, or otherwise, the Vice-President acts as President until the new President is elected to fill such vacancy. When the President is unable to discharge his functions owing to absence or illness or any other cause, the Vice-President discharges his functions. The Vice-President, when he acts as President, has all the powers and immunities of the President and is entitled to such emoluments, allowances and privileges as may be determined by Parliament by law.

The Vice-President is elected by the members of both Houses of Parliament assembled at a joint meeting in accordance with the system of proportional representation by means of the single transferable vote. The voting at such election is to be by secret ballot. He is not to be a member of either House of Parliament or of a House of any State Legislature, and if he is such a member he vacates his seat in that House on the date on which he enters upon his office as Vice-President.

To be eligible for election as Vice-President a person must be a citizen of India, must have completed the age of thirty-five years, and must be qualified for election as a Member of the Council of States. The other qualifications for the office are the same as those which are prescribed for the election of the President. He holds office for a term of five years. He may, by writing under his hand addressed to the President, resign. He may be removed from his office by a resolution of the Council of States passed by a majority of all the then members of the Council and agreed to by the



House of the People. But no resolution for this purpose is to be moved unless at least fourteen days' notice has been given of the intention to move the resolution. Notwithstanding the expiration of his term, the Vice-President continues to hold office until his successor enters upon his office. Every Vice-President has, before entering upon his office, to make and subscribe before the President, or some person appointed by the President, an oath or affirmation in the prescribed form.

Parliament has power to make provision for the discharge of the functions of the President in any contingency not provided for in the Constitution. All doubts and disputes arising out of or in connection with the election of the President or the Vice-President are to be enquired into and decided by the Supreme Court, whose decision is final. If the election of the President or the Vice-President is declared void, acts done by him in the exercise of his office are not invalidated by reason of that declaration. Any matters relating to the election of the President or Vice-President are to be regulated by law by Parliament.

#### EXTENT OF EXECUTIVE POWER OF THE UNION

The Executive Power of the Union is co-extensive with its legislative power. In other words legislative power and executive power go hand in hand. The executive power of the Union extends (a) to all matters with respect to which Parliament has power to make laws, (b) to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement.

## COUNCIL OF MINISTERS

The President is the constitutional head of the State. The *de facto* Executive is the Council of Ministers or the Cabinet. It is laid down that the Council of Ministers is to aid and advise the President. But, having regard to the theory of the Constitution, the President has, in practice, to act on the advice of the Council of Ministers. As the President is to act on the advice of the Cabinet in all matters, and as the title of the Cabinet to govern depends on the confidence of the House of the People and lapses if that confidence is lost, the system secures the direct and continuous responsibility of the Executive to Parliament.

The Constitution provides that there shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions. The number of Ministers is not fixed, as it depends upon the requirements from time to time. The question whether any, and if so what, advice was tendered by Ministers to the President cannot be enquired into in any court. The Prime Minister is appointed by the President, and the other Ministers are appointed by the President on the advice of the Prime Minister. The Prime Minister is the pivot on which the whole constitutional machinery turns. The Ministers hold office during the pleasure of the President. The Council of Ministers is collectively responsible to the House of the People. This means that every member of the Council accepts responsibility for every decision of the Cabinet. If a Minister is unable to accept responsibility, the only alternative left for him is to resign, as there is collective responsibility. Before a Minister enters upon his office, the President ad-

ministers to him the oaths of office and of secrecy according to the prescribed forms. A Minister who for any period of six consecutive months is not a member of either House of Parliament ceases to be a Minister at the expiration of that period. The salaries and allowances of Ministers are to be such as Parliament may from time to time by law determine. To keep continuous touch between the Cabinet and the President, the Constitution imposes a duty on the Prime Minister to keep the President informed regarding the administration of the affairs of the Union. It is the duty of the Prime Minister (a) to communicate to the President all decisions of the Council of Ministers relating to the administration of the affairs of the Union and proposals for legislation, (b) to furnish such information relating to the administration and proposals for legislation as the President may call for, (c) if the President so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council. These provisions are intended to secure harmonious working between the President and the Council of Ministers. If the President happens not to agree with the Council of Ministers on any matter, he may try to persuade them, but if he does not succeed, he has to accept their advice. The actual part which the President may play in the Government of the Union largely depends upon the personal equation. The President reigns, so to speak, but does not govern.

#### CONDUCT OF GOVERNMENT BUSINESS

All Executive action of the Government of India is expressed to be taken in the name of the President.

All orders and other instruments are made and executed in the name of the President and are authenticated according to the rules made by the President. The President makes rules for the more convenient transaction of the business of the Government of India and for the allocation of such business among the Ministers.

#### ATTORNEY-GENERAL FOR INDIA

The President appoints a person who is qualified to be appointed as a Judge of the Supreme Court to be Attorney-General for India. It is the duty of the Attorney-General to give advice to the Government of India upon such legal matters, and to perform such legal duties, as may be referred to or assigned to him by the President. In the performance of his duties he has right of audience in all courts in the territory of India. He holds office during the pleasure of the President and receives such remuneration as the President may determine. Constitutionally the pleasure of the President depends upon the advice of the Ministry; hence in practice the appointment of the Attorney-General is a political appointment.

## CHAPTER II

### THE UNION LEGISLATURE

#### PARLIAMENT

The Parliament of the Union consists of the President and two Houses, known respectively as the Council of States and the House of the People. Thus the Union Legislature is bicameral. The Upper House represents the units or the States; the Lower House represents the people. The two Houses respectively at once function to preserve the integrity of the units and to secure the oneness and the integration of the Union.

The Council of States consists of 250 members. Of these 12 are nominated by the President, and the remaining 238 are the elected representatives of the States. 145 seats are allotted to Part A States, 49 to Part B States, and 10 to Part C States.<sup>1</sup> The

#### COMPOSITION OF THE COUNCIL OF STATES.

Part A States.		Part B States.		Part C States.	
Assam	6	Hyderabad	11	Ajmer & Coorg	1
Bihar	21	Jammu & Kashmir	4	Bhopal	1
Bombay	17	Madhya Bharat	6	Bilaspur	} 1
Madhya Pradesh	12	Mysore	6	Himachal Pradesh	
Madras	27	Patiala and East Punjab States	} 3	Delhi	1
Orissa	9	Union		Kutch	1
Punjab	8	Rajasthan	9	Manipur	
Uttar Pradesh	31	Saurashtra	4	Tripura	1
West Bengal	14	Travancore-Cochin	6	Vindhya Pradesh	4
<hr/> 145		<hr/> 49		<hr/> 10	

members to be nominated by the President are persons having special knowledge or practical experience in respect of such matters as literature, science, art and social services. The representatives of each Part A and Part B State are elected by the elected members of the Legislative Assembly of the State in accordance with the system of proportional representation by means of the single transferable vote, while the representatives of Part C States are chosen in such manner as Parliament may by law prescribe.

The House of the People consists of not more than 500 members directly elected by the voters in the States. For the purpose of electing members, States are divided, grouped or formed into territorial constituencies and the number of members to be allotted to each such constituency is so determined as to ensure that there shall be not less than one member for every 750,000 of the population and not more than one member for every 500,000 of the population. The representation of the territories comprised within the territory of India but not included within any State is such as Parliament may by law provide. The election to the House of the People is on the basis of adult suffrage, that is to say, every citizen (man or woman) who is not less than 21 years of age and is not otherwise disqualified under the Constitution or under any Act of Parliament on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, is entitled to be registered as a voter in such election. Parliament by law provides for the representation in the House of the People of any Part C State or of any territories comprised in the territory of India.

The Council of States is not subject to dissolution.



Its members are elected for six years, one-third of them retiring every second year. The House of the People, unless sooner dissolved, has a maximum duration of five years from the date appointed for its first meeting. The expiration of the period of five years operates as a dissolution of the House. The period of five years may, while a Proclamation of Emergency is in operation, be extended by Parliament for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate.

To be qualified to be chosen to fill a seat in Parliament, a person must be (a) a citizen of India, (b) in the case of a seat in the Council of States, not less than thirty years of age and, in the case of a seat in the House of the People, not less than twenty-five years of age, and (c) must possess such other qualifications as may be prescribed by Parliament.

The President may, from time to time, summon each House of Parliament, at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session. The President may from time to time (a) prorogue the Houses or either House, (b) dissolve the House of the People. He may address either House or both Houses assembled together and for that purpose require the attendance of the members. He may send messages to either House whether on a Bill pending in Parliament or otherwise. The House to which any message is so sent is with all convenient despatch to consider any matter required by the message to be taken into consideration.

At the commencement of the first session after each general election to the House of the People, and at the commencement of the first session of each year, the President has to address both Houses of Parliament assembled together and inform Parliament of the causes of its summons. Every Minister and the Attorney-General for India has the right to speak in, and otherwise to take part in the proceedings of either House, in any joint sitting of the Houses, and in any Committee of Parliament of which he may be named a member, but is not entitled to vote.

The Vice-President of India is *ex-officio* Chairman of the Council of States. The Council of States chooses a

Deputy Chairman from its members. The Deputy Chairman vacates his office if he ceases to be a member of the Council, and may at any time resign his office by writing under his hand addressed to the Chairman. He may be removed from his office by a resolution of the Council passed by a majority of all the then members of the Council after at least fourteen days' notice of the intention to move the resolution. While the office of the Chairman is vacant, or while the Vice-President is acting as President of India, the Deputy Chairman performs his duties. If the office of the Deputy Chairman is also vacant, a member of the Council of States appointed by the President performs his duties. If the Chairman and the Deputy Chairman are absent from any sitting of the Council, such person as may be determined by the rules of procedure acts as Chairman. The Chairman or the Deputy Chairman is not to preside at any sitting of the Council while any resolution for his removal from his office is under consideration. But the Chairman has the

right to speak in, or otherwise to take part in the proceedings of the Council at such sitting, but is not entitled to vote at all on such resolution or on any other matter during such proceeding.

The House of the People chooses a Speaker and a Deputy Speaker from its own members. All the provisions already considered with regard to the Chairman and the Deputy Chairman respectively of the Council of States are applicable to the Speaker and the Deputy Speaker respectively.

The Chairman of the Council of States holds office during tenure of the membership of the Council, whereas when the House of the People is dissolved the Speaker does not vacate his office until immediately before the first meeting of the House of the People after the dissolution. The Chairman and the Deputy Chairman of the Council of States, and the Speaker and the Deputy Speaker of the House of the People, are paid such salaries and allowances as may be fixed by Parliament by law.

Each House of Parliament has a separate secretarial staff, but this does not prevent the creation of posts common to both Houses. Parliament by law regulates the recruitment and conditions of service of persons appointed to the secretarial staff of either House.

## CONDUCT OF BUSINESS

Before taking his seat, every member of either House of Parliament has to make and subscribe before the President or some person appointed by him an oath or affirmation according to the prescribed form. All questions at the sitting or joint sitting of the Houses are determined by a majority of votes of all the mem-

bers present and voting, other than the Speaker or the person acting as Chairman or Speaker. The Chairman or the Speaker, or the person acting as such, does not vote in the first instance and has only a casting vote in the case of an equality of votes. Either House of Parliament has power to act notwithstanding any vacancy in its membership. Proceedings in Parliament are valid even if some disqualified person has sat or voted or has otherwise taken part in the proceedings. The quorum to constitute a meeting of either House is one-tenth of the total number of members of the House, until Parliament by law otherwise provides. If at any time during a meeting of the House there is no quorum it is the duty of the Chairman or the Speaker either to adjourn the House or to suspend the meeting until there is a quorum.

#### DISQUALIFICATIONS OF MEMBERS

No person can be a member of both Houses of Parliament. Rules are made by Parliament providing for the vacation by a person who is chosen a member of both Houses of his seat in one House or the other. No person is to be a member both of Parliament and of a House of Legislature of a Part A or Part B State. If a person is chosen a member of both, then, at the expiration of the period specified in the rules made by the President, that person's seat in Parliament becomes vacant, unless he has previously resigned his seat in the State Legislature. The seat of a member of either House of Parliament who becomes subject to any of the disqualifications mentioned in the Constitution, or who resigns his seat, becomes vacant. Either House of Parliament may declare vacant the seat of any member who absents himself from all meetings for sixty days without

the permission of the House. In computing the period of sixty days no account shall be taken of any period during which a House is prorogued or is adjourned for more than four consecutive days.

A person is disqualified for being chosen as, and for being, a member of either House of Parliament (a) if he holds any office of profit under the Government of India or the

DISQUALIFICATIONS  
FOR MEMBERSHIP.

Government of any State, other than an office declared by Parliament not to disqualify its holder; (b) if he is of unsound mind and stands so declared by a competent court, (c) if he is an undischarged insolvent, (d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign State, (e) if he is so disqualified by any law made by Parliament. A person who is a Minister either for the Union or for the State is not deemed to hold an office of profit. If any question arises as to whether a member of either House of Parliament has become subject to any of the disqualifications, the question is to be referred for the decision of the President and his decision is final. But before giving any decision on such question, the President has to obtain the opinion of the Election Commission and has to act according to such opinion. If a person sits or votes as a member of either House of Parliament before he has made or subscribed his oath or affirmation, or when he knows that he is not qualified or that he is disqualified for membership thereof, or that he is prohibited from so doing by any law made by Parliament, he is liable in respect of each day on which he so sits or votes to a penalty of five hundred rupees to be recovered as a debt due to the Union.

## POWERS, PRIVILEGES AND IMMUNITIES OF PARLIAMENT AND ITS MEMBERS

‘To enable the members of Parliament to discharge their duties freely and effectively, they are given certain privileges. The members are assured freedom of speech in Parliament, subject to the provisions of the Constitution and to the rules and standing orders regulating the procedure of Parliament. No member of Parliament is liable to any proceedings in any Court in respect of anything said or any vote given by him in Parliament or in any committee thereof, and no person is so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings. Freedom of speech, of course, does not include the right to publish a speech which is libellous, apart from publication by or under the authority of either House. Other privileges and immunities of the members of the House are to be such as may be defined by Parliament by law. All these provisions apply to those who have the right to speak in, or otherwise to take part in the proceedings of Parliament. Members of either House receive such salaries and allowances as are determined from time to time by Parliament by law.

## LEGISLATIVE PROCEDURE

According to the legislative procedure, a Bill, other than a Money and Finance Bill, may originate in either House of Parliament. A Bill is to be deemed to have been passed by the Houses of Parliament only if it has been agreed to by both Houses, either without amendment or with such amendments only as are agreed to by both Houses. The prorogation of the



Houses does not involve the lapse of a Bill pending in Parliament. The dissolution of the House of the People causes the lapse of any Bill which is pending in it, or which has been passed by that House but is pending in the Council of States. If a Bill (except a Money Bill), has been passed by one House and transmitted to the other House and is rejected by the other, or if the Houses have finally disagreed as to the amendments, or if it is not passed within six months after its reception by the other House, the President may notify to the Houses either by message or by public notification his intention to call a joint sitting for the purpose of deliberating and voting on the Bill. The President may call a joint sitting at any time after the date of its notification. At the joint sitting the questions are determined by a majority of the total number of members of both Houses present and voting. Only such amendments may be made as are consequential. The decision of the person presiding as to the amendments which are admissible is final.

No Money Bill shall be introduced in the Council of States. This provision is in accordance with the democratic principle that any proposal for the imposition of taxation or the appropriation of public revenue should emanate from the House which represents the people. After the Money Bill is passed by the House of the People, it is transmitted to the Council of States for its recommendations. The Council of States has, within fourteen days from the date of its receipt, to return the Bill to the House of the People with its recommendations. The House of the People may either accept or reject all or any of the recommendations of the Council of States. If the House of the People

SPECIAL PROCEDURE IN  
RESPECT OF MONEY BILLS.

accepts any of them, the Money Bill shall be deemed to have been passed by both Houses with those amendments. If the House of the People does not accept any of the recommendations of the Council of States, the Money Bill shall be deemed to have been passed by both Houses in the form in which it was passed by the House of the People. If a Money Bill passed by the House of the People and sent to the Council of States is not returned to the House of the People within fourteen days, it shall be deemed to have been passed by both Houses at the expiration of the said period in the form in which it was passed by the House of the People. The effect of this provision is that in money or financial matters the Council of States has neither the initiative nor the determining voice. It has the power of making recommendations which may or may not be accepted by the House of the People, and if it does nothing for fourteen days after receiving a Bill, the Bill as passed by the House of the People is deemed to have been passed by Parliament. Thus the real and effective power as regards Money Bills is with the House of the People.

A Bill is a Money Bill if it contains only provisions dealing with all or any of the following matters:

WHAT IS A MONEY BILL?

- (a) the imposition, abolition, remission, alteration, or regulation of any tax;
- (b) the regulation of the borrowing of money or the giving of any guarantee by the Government of India, or the amendment of the law with respect to any financial obligations of the Government of India;
- (c) the custody of the Consolidated Fund or the Contingency Fund of India, the payment of

- moneys into or the withdrawal of moneys from any such Fund;
- (d) the appropriation of moneys out of the Consolidated Fund of India;
  - (e) the declaring of any expenditure to be expenditure to be charged on the Consolidated Fund of India or the increasing of the amount of any such expenditure;
  - (f) the receipt of money on account of the Consolidated Fund of India or the public account of India, or the custody or issue of such money or the audit of the accounts of the Union or of a State;
  - (g) any matter incidental to any of the matters specified above.

If a Bill only provides for fines, fees, etc., it is not to be deemed a Money Bill. If any question arises as to whether a Bill is a Money Bill or not, the Speaker of the House of the People is to decide it and his decision is final. Every Money Bill, when it is transmitted to the Council of States, and when it is presented to the President for assent, must have an endorsement on it in the form of a certificate of the Speaker of the House of the People signed by him that it is a Money Bill.

When a Bill has been passed by the Houses of Parliament, it must be presented to the President. The President declares either that he assents to it or that he withholds his assent. The President may, as soon as possible after the presentation to him of a Bill (except a Money Bill) for assent, return the Bill to the Houses with a request for its reconsideration, or may suggest amendments, and the Houses have to consider his

suggestion without delay. If the Bill is passed again by the Houses with or without amendments and presented to the President for assent, the President has to give his assent to it.

### PROCEDURE IN FINANCIAL MATTERS

The financial procedure is based upon the principle that a proposal for the imposition of taxation or for the appropriation of public revenue can only be made on the recommendation of the President—on the responsibility of the Executive (Cabinet).

There is an Appropriation Act which authorizes expenditure on several heads up to amounts specified in the Act.

In every financial year the President shall cause to be laid before the Houses of Parliament a statement, ANNUAL FINANCIAL STATEMENT. called the Annual Financial Statement, of the estimated receipts and expenditure of the Government of India for the year, showing separately—

- (a) the sums required to meet the expenditure which is charged upon the Consolidated Fund of India, and
- (b) the sums required to meet other expenditure proposed to be made from the Consolidated Fund of India and distinguishing revenue expenditure from other expenditure.

The expenditure charged on the Consolidated Fund comprises:—

- (a) the emoluments and allowances of the President and other expenditure relating to his office;

- (b) the salaries and allowances of the Chairman and the Deputy Chairman of the Council of States and the Speaker and the Deputy Speaker of the House of the People;
- (c) debt charges for which the Government of India is liable, including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt;
- (d) (i) the salaries, allowances and pensions payable to or in respect of Judges of the Supreme Court;  
(ii) the pensions payable to or in respect of Judges of the Federal Court;  
(iii) the pensions payable to or in respect of Judges of High Court of Part A States;
- (e) the salary, allowances and pension payable to or in respect of the Comptroller and Auditor-General of India;
- (f) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal;
- (g) any other expenditure declared by the Constitution or by Parliament by law to be so charged.

This expenditure is described as charged on the Consolidated Fund of India,<sup>1</sup> because it is exempt

<sup>1</sup>The term "Consolidated Fund" means a single general Fund constituted of all funds of the Union into which all revenues are paid and out of which all normal expenditure is met. The purpose of the Consolidated Fund is to enable the Treasury and the Parliament of the Union to deal with the revenues of the Union as a whole instead of allocating a particular tax to particular items of expenditure.

For the working of the Government it is necessary to reserve certain expenditure from the annual parliamentary vote. This expenditure is

from the annual vote of Parliament. There is good reason for exempting it from annual Parliamentary voting as it is required for the discharge of the vital functions of the State. This expenditure is not subject to the voting of Parliament, but either House of Parliament is at liberty to discuss the estimates of this expenditure. The other expenditure is submitted in the form of demands for grants to the House of the People, which may assent or refuse to assent to any demand, or assent to a demand subject to a reduction of the amount specified therein. No demand for a grant can be made except on the recommendation of the President.

After the grants have been made by the House of the People a Bill is introduced to provide for the appropriation out of the Consolidated Fund of India of all moneys re-

**APPROPRIATION BILLS.** required to meet : (a) the grants so made by the House of the People, and (b) the expenditure charged on the Consolidated Fund of India, but not exceeding in any case the amount shown in the statement previously laid before Parliament. No amendment shall be proposed to any such Bill in either House of Parliament which has the effect of varying the amount or altering the destination of any grant so made. The decision of the person presiding as to whether an amendment is inadmissible is final. No money shall be withdrawn from the Consolidated Fund of India except under appropriation under the Appropriation Act. To meet the contingency of the grant proving insufficient, provision is made for securing a supplementary grant by following the same procedure as for charged on the Consolidated Fund, which means that an annual vote is not required for it.



the original grant. Expenditure is incurred by Government from month to month, and some expenditure is incurred before the Appropriation Act is passed, so that provision has to be made for such expenditure. The House of the People is empowered (a) to make any grant in advance in respect of the estimated expenditure for a part of any financial year pending the passing of the Appropriation Act, (b) to make a grant for meeting an unexpected demand upon the resources of India, (c) to make an exceptional grant which forms no part of the current service of any financial year. Parliament has also power to authorize the withdrawal of moneys from the Consolidated Fund of India for the purposes of such grants.

A Money Bill or an amendment to it must be recommended by the President, and it shall not be introduced in the Council of States.

#### SPECIAL PROVISIONS AS TO FINANCIAL BILLS.

An amendment making provision for the reduction or abolition of any tax does not require the recommendation of the President. No Bill which, if enacted and brought into operation, would involve expenditure from the Consolidated Fund of India shall be passed by either House of Parliament, unless the President has recommended to that House the consideration of the Bill. Thus the initiative in financial matters lies with the Executive. It may be noted that in financial matters both Houses of Parliament are not given coordinate or coequal powers, but the House of the People alone has real and effective power in such matters.

#### PROCEDURE GENERALLY

Each House of Parliament makes rules regulating its procedure and the conduct of its business. The Pre-

sident, after consultation with the Chairman of the Council of States and the Speaker of the House of the People, makes rules as to the procedure with respect to joint sittings of, and communications between, the two Houses. The Speaker of the House of the People presides at a joint sitting of the two Houses, or in his absence any person entitled under the rules to do so.

Business in Parliament is to be transacted in Hindi or English. But the Chairman of the Council of States

LANGUAGE TO BE USED  
IN PARLIAMENT.

or the Speaker of the House of the People, as the case may be, may permit any member who cannot adequately express himself in either language to address the House in his mother tongue. This is a temporary provision. Unless Parliament by law otherwise provides, the option to use English will cease at the expiration of fifteen years from the commencement of the Constitution. In other words English may be used for fifteen years, and may be authorized for a longer period if Parliament by law so provides.

No discussion is allowed in Parliament with respect to the conduct of any Judge of the Supreme

RIGHT OF DISCUSSION IN  
PARLIAMENT.

Court or of a High Court in the discharge of his duties except on a motion for presenting an address to the President praying for the removal of the Judge under the provisions of the Constitution. The courts have no jurisdiction to question the validity of any proceedings in Parliament on the ground of any alleged irregularity of procedure. No officer or member of Parliament in whom powers are vested by the Constitution for regulating procedure or the conduct of business or maintenance of order in Parliament,

is subject to the jurisdiction of any court in respect of his exercise of these powers.

The members of Parliament have the right of asking questions and supplementary questions and also of moving resolutions on matters which are within the sphere of Parliament or on matters of public interest. They have also the right of moving motions for adjournment to discuss any matter of urgent public interest. All these rights are embodied in the rules of procedure and the standing orders which are in force.

### LEGISLATIVE POWERS OF THE PRESIDENT

A situation may arise during the recess of Parliament in which the executive action of the President may be insufficient to meet the circumstances. He is, therefore, entrusted with legislative powers during this period. If at any time, except when both the Houses of Parliament are in session, the President, is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances may appear to him to require. Such an Ordinance has the same force and effect as an Act of Parliament. It must be laid before both Houses of Parliament and it ceases to operate at the end of six weeks from the re-assembly of Parliament, unless resolutions disapproving it are passed by both Houses before the expiration of that period. It may be withdrawn by the President at any time. The power of the President to promulgate an Ordinance is an extraordinary power, but it is to be remembered that in actual practice he exercises it on the advice of the Ministry which is responsible to the House of the People.

## CHAPTER III

### THE UNION JUDICIARY

Judicial power is an indispensable element in government. Hence if a federal government is to work effectively it must have its own judiciary to exercise its judicial power. The essence of a federation is the distribution of the legislative, financial and executive powers between the federation and the federating units. Both the federal government and the federating governments have to function within their demarcated and delimited spheres. Disputes as regards the interpretation of the Constitution and the respective rights of the federation and the units are inevitable and common in all federations. Hence a Federal or Supreme Court is an indispensable necessity in a federal Constitution. Further, in a federal Constitution in which the fundamental rights of citizens are declared and guaranteed, and remedies against interference with them are provided through the Supreme Court, the Supreme Court has to protect these rights. Thus a Supreme Court acts at once as the interpreter and guardian of the Constitution.

The Indian Constitution provides for the establishment of a Union Judiciary—the Supreme Court—with original, appellate and advisory jurisdiction. Though the Constitution is of a federal type, it differs from the American Constitution in that there is no double chain of courts, one to administer the Union laws and the other to administer the State laws. All the courts of the country constitute a single hierarchy with the Supreme Court at its head.

The Constitution provides for the establishment of a Supreme Court of India. It consists of the Chief Justice of India and, until Parliament by law prescribes a larger number, of not more than seven other Judges. Every Judge of the Supreme Court is appointed by the President after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose and holds office until he attains the age of sixty-five years. In the case of appointment of a Judge other than the Chief Justice, the Chief Justice of India is always to be consulted. A Judge may resign, and he may be removed from his office only by an order of the President passed after an address by each House of Parliament supported by a majority of not less than two-thirds of the members present and voting has been presented to the President by both Houses of Parliament in the same session for such removal on the ground of proved misbehaviour or incapacity.

A Judge of the Supreme Court must be a citizen of India and must have been for at least five years a Judge of a High Court or High Courts or an advocate of a High Court or High Courts for at least ten years, or must be, in the opinion of the President, a distinguished jurist. Every Judge before he enters upon his office has to make and subscribe before the President an oath or affirmation in the prescribed form. A person who has been a Judge of the Supreme Court cannot plead or act in any court or before any authority within India.

The Judges of the Supreme Court are to be paid salaries as follows:—The Chief Justice Rs. 5,000/-

QUALIFICATIONS FOR  
APPOINTMENT AS A  
JUDGE OF THE SUPREME  
COURT.

**SALARIES OF THE JUDGES.** and other Judges Rs. 4,000/- per month. They are entitled, without payment of rent, to the use of an official residence. The Judges' privileges and allowances and other rights in respect of leave of absence and pension are fixed by Parliament by an Act and cannot be varied to their disadvantage after their appointment. Their salaries are charged on the Consolidated Fund of India and cannot be voted upon by Parliament, which may, however, discuss the salaries. All these provisions are intended to secure fixity of tenure of office and of salaries with a view to ensuring the Judges' independence, so essential for the functioning of a democratic federal Constitution.

When the office of the Chief Justice of India becomes vacant, or when the Chief Justice is unable for any reason to perform the duties of his office, the President is to appoint one of the other Judges of the Court for the purpose. If at any time the session of the Supreme Court cannot be held or continued for want of a quorum, the Chief Justice of India may, with the previous consent of the President and after consultation with the Chief Justice of the High Court concerned, nominate as an *ad hoc* Judge for the necessary period a Judge of a High Court duly qualified for appointment as a Judge of the Supreme Court. A Judge so nominated has, in priority to other duties of his office, to attend the sittings of the Supreme Court, and while so attending he has all the jurisdiction, powers and privileges, and discharges the duties, of a Judge of the Supreme Court. The Chief Justice of India may at any time, with the previous consent of the President, request an ex-Judge of the Supreme Court to sit and act as a Judge of the Supreme Court. Every



such person so requested, if he consents to sit and act as a Judge, is entitled, while so sitting and acting, to such allowances as the President may determine and has all the jurisdiction, powers and privileges of, but is not otherwise to be deemed to be, a Judge of the Supreme Court.

The Supreme Court is a court of record and has all the powers of such a court including the power to punish for contempt of itself.

The Supreme Court shall normally sit in Delhi, but it may also sit in such other place or places as the Chief Justice of India may, with the approval of the President, appoint.

#### SEAT OF SUPREME COURT.

The Supreme Court has both original and appellate jurisdiction. It has also consultative or advisory jurisdiction. The original jurisdiction is mainly confined to matters regarding the interpretation of

#### JURISDICTION OF THE SUPREME COURT.

the provisions of the Constitution which arise between the Union and the federating Units or between the federating Units themselves. In addition, it has appellate jurisdiction to issue orders in the nature of writs for the enforcement of fundamental rights. Apart from this, it has no original jurisdiction in other matters. It has appellate jurisdiction in all matters from the High Courts in the States as well as from other tribunals. It has also advisory jurisdiction on reference being made to it by the President in certain matters.

The Supreme Court has original jurisdiction in two classes of cases. (1) It has exclusive jurisdiction in any dispute between the Government of India and one or more States,

#### ORIGINAL JURISDICTION.<sup>1</sup>

<sup>1</sup>In a case in which the Supreme Court has original jurisdiction, a person can straightway file a suit or move the Supreme Court.

or between the States among themselves, which involves any question of law or fact on which the existence or extent of a legal right depends. Thus the parties to the suits must be Governments, either the Union and the Units or the federating Units. (2) It has power to issue directions or orders in the nature of writs of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, or any of them, for the enforcement of fundamental rights.

The Supreme Court has appellate jurisdiction from the High Courts and other tribunals in the States. The

APPELLATE JURISDICTION. appellate jurisdiction has two

aspects: (1) jurisdiction regarding appeals involving the interpretation of the Constitution, whether in a criminal, civil or other proceeding (constitutional cases); and (2) jurisdiction regarding appeals in other civil or criminal matters.

(1) *Constitutional Cases.* An appeal lies to the Supreme Court from any judgment, decree or final order of a High Court in India, whether in a civil, criminal or other proceeding, if the High Court certifies that the case involves a substantial question of law as to the interpretation of the Constitution. If the High Court refuses to grant a certificate, an application may be made to the Supreme Court for the grant of special leave. Where such a certificate is given, or such leave is granted, any party in the case may appeal to the Supreme Court on the ground that the question has been wrongly decided and, with the leave of the Supreme Court, also on any other ground.

(2) (a) *Appeals in Civil Matters.* An appeal lies to the Supreme Court from a judgment, decree or final order in a civil proceeding of a High Court in India, if the High Court certifies (a) that the amount or value

of the subject-matter of the dispute in the court of first instance and still in dispute on appeal was and is not less than twenty thousand rupees, (b) that the judgment, decree or final order involves, directly or indirectly, some claim or question respecting property of the like amount or value, or (c) that the case is a fit one for appeal to the Supreme Court.

(2) (b) *Appeals in Criminal Matters.* An appeal lies to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court in India, if the High Court (a) has on appeal reversed an order of acquittal of an accused person and sentenced him to death, or (b) has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death, or (c) certifies that the case is a fit one for appeal to the Supreme Court.

The Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court, or tribunal in India, except by a court or tribunal constituted by or under any law relating to the Armed Forces. This is a very important provision, as it enables the Supreme Court to review the decision of any tribunal in India if there is a miscarriage of justice.

The Supreme Court has power to review any judgment pronounced or order made by it.

POWER OF REVIEW.

Provision is also made for the enlargement of the jurisdiction of the Supreme Court.

The law declared by the Supreme Court is binding on all courts within the territory of India.

Any decree passed by the Supreme Court or order made by the Supreme Court is enforceable throughout the territory of India in such manner as may be prescribed by law by Parliament. The Supreme Court has power to make orders for the attendance of witnesses, the discovery or production of documents, or the investigation or punishment of any contempt of itself, and all such orders are enforceable in the whole territory of India.

If at any time the President thinks that a question of law or fact has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer the question to the Supreme Court for consideration and the Court may report to the President its opinion thereon. This is the advisory or consultative jurisdiction of the Supreme Court.

All authorities, civil and judicial, in the territory of India must act in aid of the Supreme Court.

The Supreme Court has power, with the approval of the President, to make rules for regulating the practice and procedure of the Court.

The minimum number of Judges who are to sit for the purpose of deciding constitutional cases or for hearing any reference for advisory opinion shall be five.

All judgments of the Supreme Court are to be delivered in open Court, and so must the report on reference made by the President. No judgment and no such opinion is to be delivered by the Supreme Court save with the concurrence of a majority of the Judges present at the hearing of the case. A dis-

senting Judge may deliver a separate judgment or opinion.

Appointments of officers and servants of the Supreme Court are made by the Chief Justice of India subject to the law made by Parliament.

OFFICERS, ETC., OF THE  
SUPREME COURT.

Their conditions of service are to be such as may be prescribed by rules made by the Chief Justice of India. Such rules, so far as they relate to salaries, allowances, leave or pensions, require the approval of the President.

The administrative expenses of the Supreme Court, including all salaries, allowances and pensions payable to the officers and servants of the Court, are charged upon the Consolidated Fund of India, and any fees or other moneys taken by the Court form part of that Fund. All these provisions are made to secure the independence of the Union judiciary.

To sum up, the Supreme Court is invested with original jurisdiction with respect to certain classes of cases and with respect to the issue of writs for the enforcement of fundamental rights, and with appellate, revisional and consultative jurisdiction. It is the protector of the fundamental rights. It is the final interpreter and custodian of the Constitution, whether relating to fundamental rights or to the questions arising between the Union and the States and the States *inter se*. There is no other Supreme Court in any federal State of the world with such a variety of jurisdiction. The importance of its role in the working and the growth of the Constitution by the process of its interpretation cannot be exaggerated.

## CHAPTER IV

### COMPTROLLER AND AUDITOR-GENERAL OF INDIA

For effective responsible government it is not enough that revenue should be raised and spent under the authority of the Legislature, but it is also essential that the items of expenditure incurred by the Executive are kept strictly within the grants made by the Legislature. This function is performed by the Comptroller and the Auditor-General, who is appointed to control on behalf of the Union and the States all disbursements and to audit all accounts of moneys administered by and under the authority of Parliament and the State Legislatures. He is at once the custodian of the public purse and the controller of the public expenditure. It is his duty to see that the expenses voted by Parliament and the State Legislatures are not exceeded or varied from what have been laid down by Parliament or the State Legislatures in what are called the Appropriation Acts. He occupies an independent and responsible position.

The Constitution provides that there shall be a Comptroller and Auditor-General of India who is appointed by the President and shall only be removed from office in like manner and on the like grounds as a Judge of the Supreme Court. Before he enters upon his office, he has to make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation in the prescribed form. His salary and other conditions of service are deter-



mined by Parliament by law. Neither his salary nor his rights in respect of leave of absence, pension or age of retirement shall be varied to his disadvantage after his appointment. He is not eligible for further office under Government after he has ceased to hold his office. The conditions of service of his staff are prescribed by rules made by the President after consultation with him. The administrative expenses of his office are charged on the Consolidated Fund of India. All these provisions are intended to secure his independence of the Legislature and the Executive.

The Comptroller and Auditor-General has to perform such duties and exercise such powers in relation to the accounts of the Union and of the States and of any other authority or body as may be prescribed by any law made by Parliament. The accounts of the Union and of the States are to be kept in such form as he may, with the approval of the President, prescribe. It may be noted that the States are the federating units, but the authority controlling their expenditure is appointed by the Union.

The reports of the Comptroller and Auditor-General relating to the accounts of the Union are submitted to the President, who has to have them placed before each House of

#### AUDIT REPORTS.

Parliament. Similarly the reports relating to the accounts of a State are submitted to the Governor or the Rajpramukh of the State, who has to have them laid before the Legislature of the State.

## Part III

### THE STATES

#### CHAPTER I

### THE GOVERNMENT OF THE STATES

#### CLASSIFICATION OF STATES

The Republic of India established by the Constitution is a territorial community and is a Union of 28 States. These States, which are specified in Parts A, B and C of the First Schedule to the Constitution, are called Part A, Part B and Part C States. There are nine Part A States : Assam, Bihar, Bombay, Madhya Pradesh, Madras, Orissa, Punjab, Uttar Pradesh and West Bengal—being the old Governors' Provinces whose territories have been enlarged by absorption of some of the former Indian States. There are eight Part B States, three of which—Hyderabad, Mysore and Jammu and Kashmir—are the former Indian States which have continued as separate units, while the remaining five—Madhya Bharat, Patiala and East Punjab States Union, Rajasthan, Saurashtra, Travancore-Cochin and Vindhya Pradesh—are units formed by the merger of two or more former Indian States. There are eleven Part C States: three of them—Ajmer, Coorg and Dehi—are the former Chief Commissioners' Provinces, and the remaining eight, namely, Bhopal, Bilaspur, Cooch-Bihar, Himachal Pradesh, Kutch, Manipur and Tripura, are administrative units formed by the merger of the territories

of one or more Indian States. There is, besides, the "territory" of the Andaman and Nicobar Islands mentioned in Part D of the First Schedule, which is a distinct administrative unit.

The Union of India, as already noted, consists of twenty-seven constituent States and the territory of the Andaman and Nicobar Islands, but the status of all the constituent States is not the same. They are classified into three categories having regard to their status before 26th January, 1950, and the political conditions obtaining in them and the nature of the constitutional machinery provided for them. The Part A States, which are the old Governors' Provinces, are constituent States with a parliamentary executive. The Part B States are also constituent units and have the same status and executive as that of the Part A States, except that the head of each Part B State is a Rajpramukh whereas the head of a Part A State is a Governor. Further, for ten years after the commencement of the Constitution these Part B States are under the general control of, and have to comply with such particular directions, if any, as may from time to time be given by, the President. Apart from some minor differences as regards the composition of High Courts, the status and constitutional machinery for Part A and Part B States are the same. Part C States being politically backward, the Constitution does not provide for a parliamentary government for them, but has made provision for a simpler and representative government under the control of the Centre. The Andaman and Nicobar Islands are centrally administered.

The differences in the status and the constitutional machinery for the different categories of States are

necessitated by the existing political conditions in these States. Many people feel, however, that a classification more dignified than that of Part A and Part B and Part C States should have been adopted.

## CHAPTER II

### PART A STATES

### THE STATE EXECUTIVE

#### THE GOVERNOR

The State Executive is parliamentary. The Governor acts on the advice of the Council of Ministers. This is Cabinet government of the British pattern. The only difference is that the formal executive head of the United Kingdom is the Sovereign, whose office is hereditary, whereas the formal executive head of the State is the Governor who is appointed by the President. Constitutionally the Governor is in all respects like the constitutional head of the British democracy.

The Constitution provides that there shall be a Governor for each State. The executive authority of the State is vested in the Governor and it is exercised by him, aided and advised by the Council of Ministers collectively responsible to the Legislative Assembly of the State.

The Governor is appointed by the President by warrant under his hand and seal. The Governor holds office during the pleasure of the President. He may, by writing under his hand addressed to the President, resign his office. Subject to the abovementioned provisions, the Governor holds office for a term of five years from the date on which he enters upon his office. He may, however, be relieved of his office by the President

APPOINTMENT OF  
GOVERNOR.

before that term expires. Notwithstanding the expiration of his term, he continues to hold office until his successor enters upon his office.

To be eligible for appointment as Governor, a person must be a citizen of India and must have completed the age of thirty-five years. The Governor shall not be a member of either House of Parliament or of a House of State Legislature, and if such a member is appointed Governor, he vacates his seat in that House on the date on which he enters upon his office as Governor. The Governor is not to hold any other office of profit. He is entitled without payment of rent to the use of his official residences and is also entitled to such emoluments, allowances and privileges as are specified in the Second Schedule to the Constitution.<sup>1</sup> His emoluments and allowances are not to be diminished during his term of office. Every Governor and every person discharging the functions of the Governor has, before entering upon his office, to make and subscribe in the presence of the Chief Justice of the High Court of the State or, in his absence, the seniormost Judge of the Court available, an oath or affirmation in the prescribed form.<sup>2</sup>

The Governor is the *de jure* head of the State and as such he has the power to grant pardons, reprieves, respites or remissions of punishment or to suspend,

<sup>1</sup>The Governor is paid a sum of Rs. 5,500/- per month as emolument.

<sup>2</sup>I.....do swear in the name of God  
solemnly affirm that I will faithfully execute the office of Governor (or discharge the functions of the Governor) of.....(name of the State) and will to the best of my ability preserve, protect and defend the Constitution and the law and that I will devote myself to the service and well-being of the people of.....  
.....(name of the State).



remit or commute the sentence of any person convicted of any offence against any law of the State.

The basic principle of the Constitution is that the executive power of the State is co-extensive with its legislative competence. In other words it extends to the matters with respect to which the State Legislature has power to make laws.

### COUNCIL OF MINISTERS

The Governor is the constitutional executive head of the State. The *de facto* executive is the Council of Ministers. In theory the Council of Ministers is to aid and advise the Governor, but having regard to the theory of the Constitution, the Governor has in practice to act on the Council's advice. As we have mentioned, this is Cabinet government of the British pattern. Some of the important conventions under which Cabinet government functions in Great Britain are embodied in the Constitution whilst other conventions are assumed for its functioning. As the Governor is to act on the advice of the Cabinet in all matters, and as the title of the Cabinet to govern depends on the confidence of the Legislative Assembly and lapses if that confidence is lost, the system secures a direct and continuous responsibility of the Executive to the Legislature and ultimately to the electorate.

The Constitution provides that there shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is required under the Constitution to exercise his functions in his discretion. The basis of the State executive is responsible government, and the Governor has in practice to

accept the advice of the Council of Ministers. Hence there would appear to be no room for him to exercise his functions in his discretion. The real position is that the Governor as the executive head of the State is not required to act in his discretion, but he is required to do so under the Constitution when he acts as an agent of the President for tribal areas. The number of Ministers is not fixed, as it depends upon the requirements from time to time. The question whether any, and if so what, advice was tendered by Ministers to the Governor cannot be inquired into in any Court. The Chief Minister is appointed by the Governor and the other Ministers are appointed by the Governor on the advice of the Chief Minister. The Ministers hold office during the pleasure of the Governor. The Council of Ministers is collectively responsible to the Legislative Assembly. This means that every member of the Council of Ministers accepts responsibility for every decision of the Cabinet. If a Minister is unable to accept responsibility, the only alternative left for him is to resign, as there is collective or joint responsibility. A Minister who for any period of six consecutive months is not a member of the State Legislature ceases to be a Minister at the end of that period. Before a Minister enters upon his office, the Governor has to administer to him the oaths of office and secrecy according to the prescribed form. The salaries and allowances of Ministers are to be such as the State Legislature may from time to time by law determine. To keep continuous touch between the Cabinet and the Governor, the Constitution imposes a duty on the Chief Minister to keep the Governor informed regarding the administration of the affairs of the State. It is the duty of the Chief Minister:

(a) to communicate to the Governor all decisions of the Council of Ministers relating to the administration of the affairs of the State and proposals for legislation; (b) to furnish such information relating to the administration of the affairs of the State and proposals for legislation as the Governor may call for; (c) if the Governor so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council. These provisions are intended to secure harmonious working between the Governor and the Council of Ministers. If the Governor happens not to agree with the Council on any matter, he may try to persuade the Ministers, but if he does not succeed he has to accept their advice. It will all depend upon the personal equation.

#### CONDUCT OF GOVERNMENT BUSINESS

The executive action of the Government of the State is to be taken in the name of the Governor. Orders and other instruments made and executed in the name of the Governor are to be authenticated in the manner specified in the rules made by the Governor. The Governor makes rules for the more convenient transaction of the business of the State, and for the allocation of the business among Ministers.

#### THE ADVOCATE-GENERAL FOR THE STATE

The Governor appoints a person who is qualified to be appointed a Judge of the High Court to be the Advocate-General for the State. It is the duty of the Advocate-General to give advice to the Government of the State upon such legal matters, and to perform such other duties of a legal character, as may be referred to

or assigned to him by the Governor, and to discharge the functions conferred on him by or under the Constitution or any other law for the time being in force. He holds office during the pleasure of the Governor and receives such remuneration as the Governor may determine. Constitutionally, the pleasure of the Governor depends upon the advice of the Ministry. Thus the appointment of the Advocate-General becomes in practice a political appointment.

## CHAPTER III

### THE STATE LEGISLATURE

The Legislature of a State consists of the Governor and (a) in the States of Bihar, Bombay, Madras, Punjab, Uttar Pradesh and West Bengal, two Houses, (b) in other States, one House. Where there are two Houses of the State Legislature, one is known as the Legislative Council and the other as the Legislative Assembly, and where there is only one House, it is known as the Legislative Assembly. But Parliament may by law provide for the abolition of the Legislative Council of a State having such a Council or for the creation of such a Council in a State having no such Council, if the Legislative Assembly of the State passes a resolution to that effect by a majority of the total membership of the Assembly and by a majority of not less than two-thirds of the members of the Assembly present and voting. Such law will contain all consequential and incidental amendments as are necessary, and it shall not be deemed to be an amendment of the Constitution for the purpose of the procedure for the amendment of the Constitution.

The Legislative Assembly consists of members chosen by direct election (except the members of the Anglo-Indian Community, who are nominated). The representation of each territorial constituency in the Legislative Assembly is on the basis of the population of that constituency at the last preceding census and shall

be (except in the case of the autonomous districts of Assam and the constituency of the cantonment and municipality of Shillong) on a scale of not more than one member for every seventy-five thousand of the population. The total number of members in the Assembly of a State shall in no case be more than five hundred or less than sixty. Upon the completion of each census the representation of each constituency is to be adjusted in the light of the figures.

The total number of members in the Legislative Council of a State having such a Council is not to exceed one-fourth of the total number of members in the Legislative Assembly of that State. The total number of members in the Legislative Council shall in no case be less than forty. Until Parliament by law otherwise provides, the composition of the Legislative Council of a State shall be as follows. Of the total number of members

COMPOSITION OF THE  
LEGISLATIVE COUNCILS.

- (a) one-third shall be elected by electorates consisting of members of municipalities, district boards and such other local authorities in the State as Parliament may by law specify;
- (b) one-twelfth shall be elected by electorates consisting of persons residing in the State who have been for at least three years graduates of any University in the territory of India or have been for at least three years in possession of qualification equivalent to that of a graduate of any such University;
- (c) one-twelfth shall be elected by electorates consisting of persons who have been for at least three years engaged in teaching in such educa-



tional institutions within the State, not lower in standard than that of a Secondary School, as may be prescribed by Parliament;

- (d) one-third shall be elected by members of the Legislative Assembly of the State from amongst persons who are not members of the Assembly;
- (e) the remainder shall be nominated by the Governor from among persons having special knowledge or practical experience in respect of matters such as literature, science, art, co-operative movement and social science.

The members to be elected under sub-clauses (a), (b) and (c) are to be chosen in such territorial constituencies as may be prescribed by Parliament, and the elections under sub-clause (d) are to be held in accordance with the system of proportional representation by means of the single transferable vote.

Every Legislative Assembly, unless sooner dissolved, continues for five years from the date appointed for its first meeting and no longer.

DURATION OF STATE LEGISLATURES. The expiration of the said period of five years operates as a dissolution of the Assembly. The period of five years may, while a Proclamation of Emergency is in operation, be extended by Parliament by law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate. The Legislative Council of a State is not subject to dissolution, but one-third of its members have to retire on the expiration of every second year.

To be qualified to be chosen to fill a seat in a State Legislature, a person must be (a) a citizen of India,

QUALIFICATIONS FOR  
MEMBERSHIP OF THE  
STATE LEGISLATURE.

(b) in the case of a seat in the Assembly, not less than twenty-five years of age, and, in the case of a seat in the Council, not less than thirty years of age, and (c) must possess such other qualifications as may be prescribed by Parliament by law.

The Governor may, from time to time, summon either House at such time and place as he thinks fit, but six months shall not intervene between its last meeting in one session and the date appointed for its first sitting in the next session. The Governor may from time to time (a) prorogue the House or either House, (b) dissolve the Assembly. He may address the Assembly or in the case of a State having a Council, either House or both Houses assembled together, and may for that purpose require the attendance of the members. He may send messages to the House or Houses on a Bill pending in the Legislature or otherwise. The House to which any message is so sent is, with all convenient despatch, to consider any matter required by the message to be taken into consideration. At the commencement of the first session, after each general election to the Assembly and at the commencement of the first session of each year, the Governor has to address the Assembly or both Houses assembled together and inform the Legislature of the causes of the summons. Every Minister and the Advocate-General for a State has the right to speak in, and otherwise to take part in the proceedings of, the Assembly or, in the case of a State having a Council, in both Houses, and any Committee of the Legislature of which he may be named a member, but is not entitled to vote.

## OFFICERS OF THE STATE LEGISLATURE

Every Legislative Assembly of a State chooses two of its members to be respectively Speaker and Deputy Speaker. A member holding either office vacates his office if he ceases to be a member of the Assembly. He may resign at any time. He may be removed from his office by a resolution of the Assembly passed by a majority of all the then members of the Assembly after fourteen days' notice of the intention to move the resolution. But when the Assembly is dissolved the Speaker does not vacate his office until immediately before the first meeting of the Assembly after the dissolution. The Speaker or the Deputy Speaker is not to preside at any sitting while any resolution for his removal is under consideration. But he has a right to speak and take part in the proceedings.

The Legislative Council chooses two of its members to be respectively Chairman and Deputy Chairman, and all the provisions already considered with respect to the Speaker and the Deputy Speaker of the Assembly are applicable to the Chairman and the Deputy Chairman respectively. The Chairman of the Legislative Council holds office during the tenure of his membership of the Council.

The Speaker and the Deputy Speaker and the Chairman and the Deputy Chairman are paid such salaries and allowances as may be respectively fixed by the State Legislature by law.

The House or each House of the State Legislature has a separate secretarial staff, but this does not prevent the creation of posts common to both Houses. The State Legislature by law regulates the recruitment and the

SECRETARIAT OF THE  
STATE LEGISLATURE.

conditions of service of persons appointed to the secretarial staff.

### CONDUCT OF BUSINESS

Before taking a seat every member of the Legislative Assembly or the Legislative Council has to make and subscribe before the Governor, or some person appointed by him, an oath or affirmation according to the prescribed form. All questions at the sitting of a House of the Legislature are determined by a majority of votes of the members present and voting, other than the Speaker or the person acting as such. The Speaker or Chairman, or the person acting as such, does not vote in the first instance and has only the casting vote in the case of equality of votes. A House of the State Legislature has power to act notwithstanding any vacancy in the membership. Proceedings in a State Legislature are valid even if some disqualified person has sat or voted or has otherwise taken part in the proceedings. The quorum to constitute the meeting of a House is ten members or one-tenth of the total number of members of the House, whichever is greater, until the State Legislature by law otherwise provides. If at any time during a meeting of the Legislative Assembly there is no quorum, it is the duty of the Speaker or the Chairman either to adjourn the House or to suspend the meeting until there is a quorum.

### DISQUALIFICATIONS OF MEMBERS

No person can be a member of both Houses of the State Legislature. Rules are made by the State Legislature providing for the vacation by a person who is chosen a member of both Houses of his seat in one House or the other. No person is to be a member of

the Legislatures of two or more Part A or Part B States. If a person is chosen a member of the Legislatures of two or more such States, then at the expiration of the period specified in the rules, that person's seat in the Legislatures of all such States becomes vacant, unless he has previously resigned his seat in the Legislatures of all but one of the States. The seat of a member of a House of a State Legislature who becomes subject to any of the disqualifications mentioned in the Constitution, or who resigns his seat, becomes vacant. The House may declare vacant the seat of any member who absents himself from all meetings for sixty days without the permission of the House. In computing the period of sixty days no account shall be taken of any period during which the House is prorogued or is adjourned for more than four consecutive days.

A person is disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State (a) if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by the State Legislature not to disqualify its holder, (b) if he is of unsound mind and stands so declared by a competent court, (c) if he is an undischarged insolvent, (d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign State, (e) if he is so disqualified by any law made by Parliament. A person who is a Minister either for the Union or for a State is not deemed to hold an office of profit. If any question arises as to whether a member of a House of the State Legislature has become subject to any of these disquali-

DISQUALIFICATIONS FOR  
MEMBERSHIP.

cations, the question is to be referred for the decision of the Governor and his decision is final. But before giving any decision on such question, the Governor has to obtain the opinion of the Election Commission and has to act according to such opinion. If a person sits or votes as a member of the Legislative Assembly or the Legislative Council before he has made or subscribed his oath or affirmation, or when he knows that he is not qualified or that he is disqualified for membership thereof, or that he is prohibited from so doing by any law made by Parliament or the State Legislature, he is liable in respect of each day on which he so sits or votes to a penalty of five hundred rupees to be recovered as a debt due to the State.

#### POWERS, PRIVILEGES AND IMMUNITIES OF THE STATE LEGISLATURES AND THEIR MEMBERS

To enable the members of the State Legislature to discharge their duties freely and effectively, they are given certain privileges. The members are assured freedom of speech in the State Legislature, subject to the provisions of the Constitution and to the rules and standing orders regulating the procedure of the Legislature. No member of the State Legislature is liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or in any committee thereof, and no person is so liable in respect of the publication by or under the authority of a House of the State Legislature of any report, paper, votes or proceedings. Freedom of speech, of course, does not include the right to publish a speech which is libellous, apart from publication under the authority of a House. Other privileges and immunities of the members of the Houses are to be



such as may be defined by the State Legislature by law. All these provisions apply to those who have the right to speak in, or otherwise to take part in the proceedings of, a House of the Legislature. Members of the Legislative Assembly or the Legislative Council receive such salaries and allowances as are determined from time to time by the State Legislature by law.

### LEGISLATIVE PROCEDURE

According to the legislative procedure a Bill, other than a Money or Finance Bill, may originate in either House of the Legislature. A Bill is to be deemed to have been passed by the Houses of the Legislature of a State having a Legislative Council only if it has been agreed to by both Houses, either without amendment or with such amendments only as are agreed to by both the Houses. The prorogation of the House or Houses does not involve the lapse of a Bill pending in the State Legislature. A Bill pending in the Legislative Council which has not been passed by the Legislative Assembly does not lapse on the dissolution of the Assembly. The dissolution of the Legislative Assembly causes the lapse of any Bill which is pending in it or which has been passed by it, but is pending in the Legislative Council. If a Bill (except a Money Bill) has been passed by the Legislative Assembly of a State and transmitted to the Legislative Council and (a) is rejected by the Council, or (b) more than three months elapse from the date on which the Bill is laid before the Council without the Bill being passed by it, or (c) the Bill is passed by the Council with amendments to which the Assembly does not agree, the Assembly may pass it again with or without amendments and send it to the Council. If after a Bill has

been so passed for the second time by the Legislative Assembly and transmitted to the Legislative Council it is rejected after the prescribed period, it is to be deemed as passed by the Legislature. Thus the Houses have not co-equal powers of legislation. In effect, the Council can only delay the passing of the Bill for some time, and thus acts merely as a check on hasty legislation.

No Money Bill shall be introduced in the Legislative Council. This provision is in accordance with the democratic principle that any proposal for the imposition of taxation or the appropriation of public revenues should emanate from the House which represents the public. After a Money Bill has been passed by the Legislative Assembly it is transmitted to the Legislative Council for its recommendations, and the Legislative Council has, within fourteen days from the date of its receipt, to return the Bill to the Legislative Assembly with its recommendations. The Legislative Assembly may either accept or reject all or any of the recommendations of the Legislative Council. If the Legislative Assembly accepts any of them, the Money Bill shall be deemed to have been passed by both Houses with those amendments. If the Legislative Assembly does not accept any of the recommendations of the Legislative Council, the Money Bill shall be deemed to have been passed by both Houses in the form in which it was passed by the Legislative Assembly. If a Money Bill passed by the Legislative Assembly and sent to the Legislative Council is not returned to the Legislative Assembly within fourteen days it shall be deemed to have been passed by both Houses at the expiration of the said period in the form in which it was passed by

the Legislative Assembly. The effect of these provisions is that in money or financial matters the Legislative Council has neither the initiative nor the determining voice. It has the power of making recommendations which may or may not be accepted by the Legislative Assembly; and if it does nothing for fourteen days after receiving the Bill, the Bill, as passed by the Legislative Assembly, is deemed to have been passed by the State Legislature. Thus the real and effective power as regards Money Bills is with the Legislative Assembly.

A Bill is a Money Bill if it contains only provisions dealing with all or any of the following matters: (a) the imposition, abolition, remission, alteration, or regulation of any tax; (b) the regulation of the borrowing of money or the giving of any guarantee by the State, or the amendment of the law with respect to any financial obligations undertaken by the State; (c) the custody of the Consolidated Fund or the Contingency Fund of the State, the payment of moneys into or the withdrawal of moneys from any such Fund; (d) the appropriation of moneys out of the Consolidated Fund of the State; (e) the declaring of any expenditure to be expenditure charged on the Consolidated Fund of the State, or the increasing of the amount of any such expenditure; (f) the receipt of money on account of the Consolidated Fund of the State or the custody or the issue of such money or the audit of the account of the State; (g) any matter incidental to any of the matters specified above.

If a Bill only provides for fines, fees, etc., it is not to be deemed a Money Bill. If any question arises as to whether a Bill is a Money Bill or not, the Speaker of the

Legislative Assembly is to decide it and his decision is final. Every Money Bill, when it is transmitted to the Legislative Council, and when it is presented to the Governor for assent, must have an endorsement on it in the form of a certificate of the Speaker of the Assembly signed by him that it is a Money Bill.

When a Bill has been passed by the Legislative Assembly, or in the case of a State having a Legislative Council, has been passed by

#### ASSENT TO THE BILLS.

both Houses of the State Legislature, it must be presented to the Governor. The Governor declares either that he assents to it or that he withholds his assent. He may, as soon as possible after the presentation to him of a Bill (except a Money Bill) for assent, return the Bill with a message for reconsideration, or may suggest amendments, and the House or Houses have to consider his suggestions without delay. If the Bill is passed again by the House or Houses with or without amendments and presented to the Governor for assent, he has to give his assent to it.

#### PROCEDURE IN FINANCIAL MATTERS

The financial procedure is based upon the principle that a proposal for the imposition of taxation or for the appropriation of public revenues can only be made on the recommendation of the Governor—on the responsibility of the Executive (Cabinet).

There is an Appropriation Act which authorizes expenditure on several heads up to amounts specified in the Act.

In every financial year the Governor shall cause to be laid before the House or Houses of the State Legislature a statement, called the

ANNUAL FINANCIAL  
STATEMENT.

Annual Financial Statement, of

the estimated receipts and expenditure of the State for the year, showing separately (a) the sum required to meet the expenditure which is charged upon the Consolidated Fund of the State, and (b) the sums required to meet other expenditure proposed to be made from the Consolidated Fund of the State, and distinguishing revenue expenditure from other expenditure.

The expenditure charged on the Consolidated Fund of the State comprises: (a) the emoluments and allowances of the Governor and other expenditure relating to his office; (b) the salaries and allowances of the Speaker and the Deputy Speaker of the Legislative Assembly and the Chairman and the Deputy Chairman of the Legislative Council; (c) debt charges for which the State is liable, including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt; (d) expenditure in respect of the salaries and allowances of Judges of the High Court; (e) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal; (f) any other expenditure declared by the Constitution, or by the State Legislature by law, to be so charged.

This expenditure is called a charge on the Consolidated Fund of the State, because it is exempt from the annual vote of the Legislature. There is good reason for exempting it from annual voting, as it is required for the discharge of the vital functions of the State. The expenditure is not subject to the voting of the Legislature, but the Legislature is at liberty to discuss the estimates of this expenditure. The other expenditure is submitted in the form of demands for grants to the Legislative Assembly, which may assent

or refuse to assent to any demand, or assent to demand subject to a reduction of the amount specified therein. No demand for a grant can be made except on the recommendations of the Governor.

After the grants have been made by the Assembly, a Bill is introduced to provide for the appropriation out of the Consolidated Fund of the State of all moneys required to meet: (a) the grants so made by the Legislative Assembly; (b) the expenditure charged on the Consolidated Fund of the State, but not exceeding in any case the amount shown in the statement previously laid before the House or Houses. No amendment shall be proposed to any such Bill in either House of the Legislature which will have the effect of varying the amount or altering the destination of any grant made. The decision of the person presiding as to whether an amendment is inadmissible is final. No money shall be withdrawn from the Consolidated Fund of the State except under appropriation made under the Appropriation Act. To meet the contingency of the grant proving insufficient, provision is made for securing a supplementary grant by following the same procedure as is gone through for the original grant. Some expenditure will be incurred by Government before the Appropriation Act is passed, and provision is made for this. The Legislative Assembly is empowered (a) to make any grant in advance in respect of the estimated expenditure for a part of any financial year pending the passing of the Appropriation Act; (b) to make a grant for meeting an unexpected demand upon the resources of the State; (c) to make an exceptional grant which forms no part of the current service of any financial year.

APPROPRIATION  
BILLS.



The Legislature of a State has also power to authorize the withdrawal of moneys from the Consolidated Fund of the State for the purposes of such grant.

A Money Bill or an amendment to it must be recommended by the Governor and it shall not be introduced in the Legislative Council.

SPECIAL PROVISIONS AS  
TO FINANCIAL BILLS.

An amendment making provision for the reduction or abolition of any tax does not require the recommendation of the Governor. No Bill which, if enacted and brought into operation, would involve expenditure from the Consolidated Fund of the State shall be passed by a House of the Legislature, unless the Governor has recommended to that House the consideration of the Bill. Thus the initiative in financial matters lies with the Executive. It may be noted that in such matters both Houses of the State Legislature are not given co-ordinate or co-equal powers, but that the Legislative Assembly alone has real and effective power.

#### PROCEDURE GENERALLY

Each House of the State Legislature makes rules regulating its procedure and the conduct of its business. The Governor, after consultation with the Speaker of the Legislative Assembly and the Chairman of the Legislative Council, makes rules as to the procedure with respect to communications between the two Houses. The State Legislature by law regulates the procedure of, and the conduct of business in, the House or Houses in relation to any financial matter or to any Bill for the appropriation of moneys out of the Consolidated Fund of the State.

Business in the State Legislature shall be transacted in the official language of the State or in Hindi or in

LANGUAGE TO BE USED  
IN PARLIAMENT.

English. But the Speaker of the Legislative Assembly or the Chairman of the Legislative Council, as the case may be, may permit any member who cannot adequately express himself in either language to address the House in his mother-tongue. This is a temporary provision. Unless the State Legislature by law otherwise provides, the option to use English will cease at the expiration of fifteen years from the commencement of the Constitution.

RIGHT OF DISCUSSION  
IN PARLIAMENT.

No discussion is allowed in the State Legislature with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties. The courts have no jurisdiction to question the validity of any proceedings in the State Legislature on the ground of any alleged irregularity of procedure. No officer or member of the State Legislature, in whom powers are vested by the Constitution for regulating the procedure or the conduct of business or maintenance of order in the Legislature, is subject to the jurisdiction of any court in respect of his exercise of these powers.

### LEGISLATIVE POWERS OF THE GOVERNOR

A situation may arise during the recess of the State Legislature in which the executive action of the Governor may be insufficient to meet the circumstances. He is therefore entrusted with legislative powers during this period. If at any time, except when the Legislative Assembly is, or both Houses of the Legislature are, in session, the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordi-

nances as the circumstances may appear to him to require. Such an Ordinance has the same force and effect as an Act of the State Legislature. It must be laid before the Legislative Assembly and also the Legislative Council, and it ceases to operate at the end of six weeks from the reassembly of the Legislature, unless a resolution disapproving it is passed by both Houses before the expiration of that period. It may be withdrawn by the Governor at any time. The power of the Governor to promulgate an Ordinance is an extraordinary power, but it is to be remembered that in actual practice this power is exercised by him on the advice of the Ministry, which is responsible to the Legislative Assembly.

## CHAPTER IV

### THE STATE JUDICIARY

#### I

#### THE HIGH COURTS IN THE STATES

For each State there is a High Court. Every High Court is a court of record and has all the powers of such a court including the power to punish for contempt of itself. The High Court consists of a Chief Justice and such other Judges as the President may, from time to time, deem it necessary to appoint. But their number, including additional Judges, is not to exceed the maximum fixed by the President, from time to time, by order in relation to that Court.

Judges are appointed by the President after consultation with the Chief Justice of India, the Governor of the State, and, in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the particular High Court. They hold office until they attain the age of sixty years. A Judge may resign his office by writing to the President, or he may be removed from his office by the President in the same manner as a Judge of the Supreme Court may be removed. The office of a Judge is vacated if he is appointed by the President to be a Judge of the Supreme Court or is transferred to any other High Court in India. A Judge of the High Court must be a citizen of India and must have held for at least ten years a judicial office in the territory of India

or must have been for at least ten years an advocate of a High Court, or High Courts. The provisions regarding the removal of Judges of the Supreme Court and the procedure for the presentation of an address are made applicable to the Judges of the High Court. Every Judge before he enters upon his office has to make and subscribe an oath or affirmation before the Governor, or some person appointed by him, in the form prescribed. A person who has held office as a Judge of a High Court after the commencement of the Constitution is prohibited from pleading or acting in any court or before any authority within the territory of India. The possibility of resumption of practice by a Judge after retirement may affect his integrity and independence while he is functioning as a Judge. This prohibition is inserted to eliminate that danger.

The salaries to be paid to the Judges are specified in the Constitution: the Chief Justice 4,000 rupees; any other Judge 3,500 rupees per month. The Chief Justice and

SALARIES, ETC., OF JUDGES.

other Judges who were in office on January 26, 1950, are to receive the same salaries which they drew before that date. Allowances and rights in respect of leave of absence and pension of the Judges of each High Court are to be determined by an Act of Parliament. Neither the allowance of a Judge nor his rights in respect of leave of absence or pension are to be varied to his disadvantage after his appointment.

The President may, after consultation with the Chief Justice of India, transfer a Judge from one High Court to any other High Court in India.

TRANSFER OF JUDGES

FROM ONE HIGH COURT TO  
ANOTHER.

When a Judge is so transferred, he is entitled, during the period he serves as a Judge of the other Court, to re-

ceive, in addition to his salary, such compensatory allowance as may be fixed by Act of Parliament and, until so fixed, as the President may by order fix.

When the office of Chief Justice of a High Court is vacant or when any such Chief Justice is, for any reason, unable to perform the duties of his office, the President may appoint one of the other Judges of the Court to perform them.

APPOINTMENT OF ACTING  
CHIEF JUSTICE.

The Chief Justice of a High Court of any State may at any time, with the previous consent of the President,

ATTENDANCE OF RETIRED  
JUDGES AT SITTINGS OF  
HIGH COURTS.

request any person who has held the office of a Judge of that Court or any other High Court to sit and act as a Judge of the High Court for that State. Every such person shall, if he consents to sit, while so sitting and acting, be entitled to such allowances as the President may determine and shall have all the jurisdiction, powers and privileges of, but shall not otherwise be deemed to be, a Judge of that High Court.

The Jurisdiction of the High Courts is not directly defined in the Constitution, but is defined with reference to the jurisdiction of the High Courts existing on

JURISDICTION OF THE  
HIGH COURTS.

January 26, 1950. In other words, the High Courts have the same jurisdiction which they had at the commencement of the Constitution. The High Courts of Calcutta, Bombay and Madras have both original and appellate jurisdiction. They have jurisdiction in all matters, civil and criminal, and also in matters connected with wills, bankruptcy, admiralty and, in the cases of Christians and Parsees, and in some cases of Hindus, also divorce. The High Courts have superintendence over all courts



in the States subject to their appellate jurisdiction, and may call for returns, and make and issue general rules and prescribe forms for regulating the practice and proceedings and the keeping of records. In cases heard in the inferior courts, the evidence is recorded and submitted when required to the High Court, which is empowered to revise, if necessary, the proceedings of these courts. The High Courts can transfer any suit from one court to another of equal or superior jurisdiction. A High Court may, on application by the Advocate-General, transfer to itself for trial a case pending before inferior courts if the case involves, or is likely to involve, the question of the validity of a Union Act or a State Act.

In addition to the right of the Supreme Court to issue writs for the enforcement of fundamental rights, every High Court has power throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases any Government, within those territories, directions, orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, or any of them, for the enforcement of any of the fundamental rights and for any other purpose. This is an important provision.

Every High Court has superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction, except over a court or tribunal constituted under any law relating to the Armed Forces. The High Court may settle tables of fees for sheriffs, clerks and officers of such courts and for attorneys, advocates and

POWER OF SUPERINTENDENCE OVER ALL COURTS BY THE HIGH COURT.

relation to which it exercises jurisdiction, except over a court or tribunal constituted under any

pleaders practising therein, with the approval of the Governor.

If the High Court is satisfied that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation of the Constitution, the determination of which is necessary for the disposal of the case, it shall withdraw the case and may (a) either dispose of it itself, or (b) determine the said question of law and return the case to the court together with a copy of its judgment, and the said court shall, on receipt thereof, proceed to dispose of the case in conformity with such judgment.

Appointments of officers and servants of the High Courts are made by the Chief Justice or such other Judge or officer of the Court as he may direct. But the Governor of the State may by rule require that in such cases as may be specified in the rule no person not already attached to the Court shall be appointed to any office connected with the Court except after consultation with the State Public Service Commission. The conditions of service of officers and servants of the High Court are to be such as may be prescribed by rules made by the Chief Justice or some other Judge or officer of the Court authorized by the Chief Justice to make them. They require the approval of the Governor. The expenses of a High Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court, are charged upon the Consolidated Fund of the State, and any fees or other moneys taken by the Court form part of that Fund.

Parliament has power by law to extend the jurisdic-

tion of a High Court to, or exclude the jurisdiction of a High Court from, any State other than, or any area not within, the State, in which the High Court has its principal seat. Some High Courts have power to exercise jurisdiction in relation to areas outside the States in which they have their principal seats.

As the Judiciary has a vital role in the working of the Constitution and in the maintenance of the balance between order and liberty, and as a safeguard against the abuse of power by the Executive, its independence is secured by fixity of tenure and the conditions of service of the Judges. It is to be noted that the salaries of the Judges and the staff of the High Court are charged on the Consolidated Fund of the State.

### SUBORDINATE COURTS

In view of the important role of the Judiciary in the governance of the country, even the subordinate judiciary is to a very large extent made independent of the Executive. Appointments of persons to be, and the posting and promotion of, district judges in a State are to be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State. A person not already in the service of the Union or of the State is eligible for appointment as a district judge if he has been for not less than seven years an advocate or a pleader and is recommended by, the High Court for appointment. Appointment of persons other than district judges to the judicial service of a State is to be made by the Governor in accordance with rules made by him after consultation with the State Public Service Commission and the High Court.

The control over district courts and courts subordinate thereto, including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service and holding any post inferior to the post of a district judge is vested in the High Court. This, however, does not authorize the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law.

#### CONTROL OVER SUB- ORDINATE COURTS.

The expression "district judge" includes judge of a city civil court, additional district judge, joint district judge, assistant district judge, chief judge of a small cause court, chief presidency magistrate, additional chief presidency magistrate, sessions judge, additional sessions judge and assistant sessions judge.

The expression "judicial service" means a service consisting exclusively of persons intended to fill the post of district judge and other civil judicial posts inferior to that post.

The Governor may by public notification direct that the provisions regarding the subordinate courts and any rules made thereunder shall with effect from such date as may be fixed by him in that behalf apply in relation to any class or classes of magistrates in the State as they apply in relation to persons appointed to the judicial service of the State subject to such exceptions and modifications as may be specified in the notification.

## II

### INFERIOR COURTS

The organization of the judicial system below the High Court in States varies slightly from State to State, but its general features are the same in all States.

## INFERIOR CIVIL COURTS

For the administration of justice, as for the general administration, a State is divided into districts and sessions divisions approximately corresponding to the districts. Broadly speaking, one district and sessions judge is appointed for each sessions division. He exercises appellate jurisdiction over the civil judges of the districts on the one hand and over the magistrates on the other, as well as the highest original jurisdiction in the districts, both criminal and civil. He is responsible for the management of all the inferior civil courts within the district and it is his duty to distribute work among those courts. These posts are filled by appointments from the Indian Civil Service or the provincial judicial service or directly from the Bar. The appointment, posting and promotion of district judges are made by the Governor in consultation with the High Court.

## DISTRICT JUDGES.

## THE SUBORDINATE JUDICIARY

Next comes the subordinate judicial service, which is defined as "a service consisting exclusively of persons intended to fill civil posts inferior to that of district judge." Subordinate judges, who are divided into first and second class, hear suits up to the amount permitted to their class by law. Their jurisdiction varies in different States.<sup>1</sup> The Governor after consulting the Public Service Commission and the High Court makes rules defining the standard of quali-

<sup>1</sup>In the State of Bombay Civil Judges are of two classes: (i) Civil Judge (Senior Division). His jurisdiction extends to all original suits and proceedings of a civil nature. (ii) Civil Judge (Junior Division). His jurisdiction extends to all original suits and proceedings of a civil nature wherein the subject-matter does not exceed the amount or value of ten thousand rupees.

fications for persons desirous of entering this service. The Public Service Commission is to hold such examinations as the Governor thinks fit and prepare a list of qualified persons. The Governor makes appointments from these persons. The posting and promotion and the granting of leave to the members of this service are in the hands of the High Courts.

. In large towns there are also a number of courts of small causes to try money suits up to Rs. 500.

In Presidency towns all civil suits ordinarily come before the High Court. But, for a speedy and less expensive system of justice, small causes courts are established to dispose of money suits up to Rs. 2,000, and city civil courts to dispose of money suits up to Rs. 25,000.

There is no appeal from the small causes court, though in certain cases the judge may refer a case to the High Court, or a revision may lie. In the Presidency towns High Courts exercise insolvency jurisdiction. In the mofussil it is exercised by district courts.

The law allows ample latitude for appeals in civil cases. An appeal lies from every decision of a second-class subordinate judge or munsiff to a district judge. The district

judge may transfer such appeals to subordinate judges for disposal. Every decree or order made by a subordinate judge is appealable to the district judge or to the High Court. On certain conditions, as already pointed out appeals from the High Courts lie to the Supreme Court.

#### INFERIOR CRIMINAL COURTS

The Code of Criminal Procedure provides for the



constitution and functions of inferior criminal courts styled courts of sessions and courts of magistrates. Every State is divided into sessions divisions, each consisting of one or more districts. In every such sessions division there is a court of sessions presided over by a sessions judge who may be assisted by additional or assistant sessions judges. These judges, who mostly belong to the Indian Civil Service, are competent to try all accused persons duly committed and to inflict any punishment authorized by law subject to appeal, but every sentence of death is subject to confirmation by the High Court.

Below the courts of sessions come courts of magistrates, who are partly members of the Indian Civil Service and mainly drawn from the provincial services. The courts of magistrates are of three classes: those of the first class having powers of passing sentence of imprisonment up to two years and a fine of Rs. 1,000, and those of the second and third classes having powers of passing sentence of imprisonment up to six months and one month and fines of Rs. 200 and Rs. 50 respectively. Only those of the first class are empowered to pass sentence of whipping.

Of the magistrates the chief is the district magistrate, who is also the Collector and district officer. He exercises supervision over all magistrates in the district, but does not himself have time to try many cases. Under him are the subdivisional magistrates, either assistant collectors or deputy collectors, who in turn have certain supervisory powers within their areas. These magistrates have first class powers. They have appellate jurisdiction over magistrates not fully em-

powered, and powers of committing more serious cases to the sessions court and of making bonds to keep the peace or be of good behaviour. The district and subdivisional magistrates may belong either to the Indian Civil Service or the provincial service. Below them is the mamlatdar or tahsildar, who is in charge of a taluka or tahsil. He has either first or second class powers. Below him is the headman or aval karkun, who has third class powers. These magistrates are appointed by the State Government and are subordinate to the district magistrate. In Madras and in some villages of Bombay State the Patel or the headman of the village possesses petty criminal powers. Similar powers are also enjoyed by panchayats in Madras.

In Presidency towns there are Presidency Magistrates to try minor offences and commit to High Court persons charged with serious crimes. In large towns honorary magistrates known as Justices of the Peace are appointed for the disposal of petty crimes.

Subject to the order of the magistrate, the police perform the duty of holding an inquest on the bodies of those who have come to an untimely death. In Calcutta and Bombay there is a Court with a coroner assisted by a jury for holding such inquests.

CORONER.

### JURY AND ASSESSORS

Trial by jury is the most cherished privilege of persons accused of crime. With a view to avoiding miscarriage of justice as far as is humanly possible, the practice of trial by jury in criminal cases which is prevalent in England has also been introduced in India. In India ordinary petty criminal cases are tried with-

out the aid of jury or assessors, but all serious cases are tried with such aid. In original criminal cases before the High Court<sup>1</sup> trial by jury is the rule. In the mofussil, as it is not always possible to empanel an efficient jury, trials before the courts of sessions are conducted with the aid of jurors or of assessors who assist but do not bind the judge by their opinion. When trial is by jury, the sessions judge, if he considers that a jury has returned a manifestly wrong verdict, has to submit the case to the High Court, which may set aside or modify the finding. A jury in India consists of nine persons in trials before the High Court, and in other trials of such uneven number up to nine as may be prescribed by the Provincial Government. The number of assessors may be three to four. Judgment may be given on the verdict of the majority, provided the judge agrees with it and, in the case of the High Courts, provided the majority includes at least six jurors.

### APPEALS

The law allows a considerable latitude for appeal in criminal cases. From a conviction by a second or third class magistrate an appeal lies to the district magistrate, and subject to certain limitations, original convictions by a magistrate of the first class are appealable to the sessions judge, whose own original convictions are in turn appealable to the High Court. The High Court may call for and examine the records of any proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality, propriety or regularity of any finding, sentence or order. There is a provision for appeal both against convic-

<sup>1</sup>The original jurisdiction of the High Court of Bombay is transferred to the Sessions Court of Greater Bombay.

tion and acquittal under certain circumstances. On the fulfilment of certain conditions an appeal lies to the Supreme Court from the judgment of the High Court.

## CHAPTER V

### PART B STATES

Part B States were Indian States before they acceded to the Dominion of India in 1947. Most of them were governed autocratically. In a large number of them even the rudiments of responsible government were absent. The forces generated after August 15, 1947, compelled most of them to adopt a democratic constitution, and finally they have all adopted the Constitution of Part A States with modifications and omissions which are only consequential. The result is that all the Part A and Part B States have the same Constitution. Hence for the study of the Executive, the Legislative and the Judiciary in Part B States, we have only to refer to these topics in Part A States with the consequential modifications. It is thus only necessary to note the modifications and omissions in the provisions regarding the Constitution of Part A States to understand the Constitution of Part B States.

#### RAJPRAMUKH

The head of a Part A State is called the Governor, while the head of a Part B State is called the Rajpramukh, and wherever the word "Governor" is used in relation to a Part A State "Rajpramukh" is to be used in relation to a Part B State. Some of the Rajpramukhs are appointed for life. The Rajpramukh is, unless he has his own residence in the principal seat of Government of the State, entitled without payment of rent to the use of an official residence and is also en-

titled to such allowances and privileges as the President may by general or special order determine.

It is provided that in the State of Madhya Bharat there shall be a Minister in charge of tribal welfare who may in addition be in charge of the welfare of the Scheduled Castes and backward classes and any other work.

For every Part B State there shall be a Legislature which shall consist of the Rajpramukh and (a) in the State of Mysore two Houses, and (b) in other States one House.

The emoluments and allowances of the Governor are charged on the Consolidated Fund of the State, while the allowances of the Rajpramukhs are fixed by the President. The salaries of the Judges of the High Courts of Part A States are fixed by the Constitution, while in Part B States they are to be determined by the President after consultation with the Rajpramukh.



## CHAPTER VI

### PART C STATES

Part C States comprise the territories known immediately before the commencement of the Constitution as the Chief Commissioners' Provinces of Delhi, Ajmer Merwar including Panth Piploda and Coorg and other territories of the Indian States of Bhopal, Bilaspur, Cooch-Bihar, Himachal Pradesh, Kutch, Manipur and Tripura which had become Chief Commissioners' Provinces before the commencement of the Constitution. The territories of these States are an integral part of the territory of the Union, and these States are also units of the Union. But the system of the administration is different from that obtaining in Part A and Part B States. They are administered centrally. Some have representative Legislatures and diluted responsible government with central control.

#### ADMINISTRATION

Part C States are administered by the President acting, to such extent as he thinks fit, through a Chief Commissioner or a Lieutenant-Governor to be appointed by him or through the Government of a neighbouring State. In some of the Part C States (Vindhya Pradesh and Himachal Pradesh) Lieutenant-Governors are appointed.

Politically, Part C States are not so developed as Part A States. Hence provision for Parliamentary Government in these States is not made in the Constitution. But provision is made in the Constitution for

introducing full or partial responsible government by an Act of Parliament. To carry out the object Parliament has passed the Government of Part C States Act, 1951, to provide for Legislative Assemblies, Councils of Ministers and Councils of Advisers for Part C States. Under the provisions of this Act, some of the States<sup>1</sup> are given Legislative Assemblies and diluted responsible government with the overriding power of the President. Some of the States are given Councils of Advisers.<sup>2</sup> The provisions of the Government of Part C States Act as regards the Legislative Assembly in these States are generally speaking on the same lines as those in Part A States, but there are some vital differences both as regards the procedure, which is simpler, and as regards the powers of the Legislature, which are narrower. As the provisions of the Council of Ministers and the whole legislative machinery are on the same lines as in Part A States, it is not necessary to deal with them at length.<sup>3</sup> It is enough to state that these States have representative Legislatures and diluted responsible government with the overriding power of the President. In the case of the State of Delhi and particularly with respect to matters concerning New Delhi, the executive head and the President have overriding power.

### HIGH COURTS

Parliament may by law constitute a High Court for a Part C State or declare any High Court in any such State to be a High Court for all or any of the purposes of the Constitution.

<sup>1</sup>These States are Ajmer, Bhopal, Coorg, Delhi, Himachal Pradesh and Vindhya Pradesh.

<sup>2</sup>These States are Kutch, Manipur and Tripura.

<sup>3</sup>For details see *The Constitution of India* by G. N. Joshi.

The administrative machinery and the organization of subordinate judiciary in Part C States are on the same lines as in Part A States.

#### ADMINISTRATION OF THE ANDAMAN AND NICOBAR ISLANDS

The Andaman and Nicobar Islands are a part of the territories of the Union of India and are administered by the President acting, to such extent as he thinks fit, through a Chief Commissioner or other authority to be appointed by him. The President makes regulations for the peace and good government of these islands and they have the force of law. It is clear from this provision that a simple and effective system of administration is provided for this territory.

#### ADMINISTRATION OF SCHEDULED AND TRIBAL AREAS

The Scheduled and Tribal Areas in Part A and Part B States are not fully developed areas. Hence special simple provision is made for their administration.

## Part IV

# RELATIONS BETWEEN THE UNION AND THE STATES

## CHAPTER I

### LEGISLATIVE RELATIONS

#### DISTRIBUTION OF LEGISLATIVE POWERS

A federation, as already explained, means the coming together of independent units which, while preserving their identities, look to the Centre to deal with matters common to all. In a federal constitution the powers of government are divided between government for the whole country (the Union) and the Governments of the parts (States) of the country. The government of the whole country has its own sphere of powers, whilst the governments of the constituent units have their own sphere of powers. Hence a federal constitution necessarily involves distribution of legislative, executive, judicial and financial powers between the federation and the federating units. The legislative spheres of the federation and the States are clearly and definitely defined and demarcated. The Legislature of the whole country has limited powers, and the Legislatures of the States have limited powers.

The Federal Legislature (Parliament) makes laws for the whole or any part of India, and the State Legislature does so for the State or any part thereof. The whole known sphere of legislative activity is mapped out by an elaborate and exhaustive enumeration of the categories

UNION LIST.

or subject-matters of legislation in three Lists, and provision is made for the residual power.

Briefly stated, the scheme of distribution is: Parliament has exclusive power to make laws on matters which are enumerated in the Union List. All these matters are those which affect the whole of India or require uniform treatment. There are ninety-seven matters or subjects in the Union List.<sup>1</sup>

The State Legislatures have exclusive power to make laws on the sixty-six matters in the State List.<sup>2</sup> These matters are essentially of provincial or local interest.

#### STATE LIST.

Experience in other countries necessitated the provision for a Concurrent List of matters, laws on which require co-ordination and uniform treatment. Both Parliament and the State Legislatures have power to make laws on the forty-seven matters<sup>3</sup> in the Concurrent List.

<sup>1</sup>The most important of the matters in the Union List are: Defence, Foreign Affairs, War and Peace, Citizenship, Railways, Maritime Shipping and Navigation, Airways, Posts and Telegraphs, Public Debt of the Union, Currency, Reserve Bank of India, Trade and Commerce with Foreign Countries, Banking, Incorporation of Companies, Insurance, Foreign Countries, Banking, Incorporation of Companies, Museums, Survey of India, Mines, National Libraries and Indian Museums, Survey of India, Census, Elections to Parliament, to State Legislatures, Audit and Accounts of the Union and of the States, Constitution and Organization of High Courts, Inter-State Trade, Inter-State Migration.

<sup>2</sup>The most important of the matters in the State List are: Public Order, Police, Administration of Justice, Prisons, Local Government, Public Health and Sanitation, Education, Libraries, Communications, Agriculture, Land, Forests, Fisheries, Trade and Commerce in the State, Theatres, Public Debt of the State.

<sup>3</sup>The most important of the matters in the Concurrent List are: Criminal Law, Marriage and Divorce, Contracts, Bankruptcy and Insolvency, Trusts and Trustees, Civil Procedure, Economic or Social Planning, Trade Unions, Social Security, Welfare of Labour, Charities, Vital Statistics, Price Control, Factories, Boilers, Electricity, Newspapers, Books and Printing Presses, Archaeological Sites.

Parliament has power to make laws on any matter for any part of the territory of India not included in a Part A or Part B State notwithstanding that such matter is a matter included in the State List.

The three legislative Lists are fairly exhaustive, but it is beyond the wit of man to visualize all possible matters which may arise in future

**RESIDUARY POWER.** and on which legislation may be necessary, hence provision has been made for the residuary power of legislation. Parliament has exclusive power to make laws with respect to any matter not found in the State List or the Concurrent List. In other words, Parliament has the residuary power of legislation.

The Constitution being federal, Parliament and State Legislatures have the exclusive powers to make laws within their respective spheres. It may be that for achieving a planned economy and in order to meet other needs of society, it may become necessary for Parliament to legislate, in the interest of the country as a whole, with respect to matters in the State List. Realising this, provision is made which gives power to Parliament to legislate on a matter in the State List in the national interest. If the Council of States declares, by resolution supported by not less than two-thirds of the members, that it is necessary or expedient in the national interest that Parliament should make laws with respect to any matter in the State List, it is lawful for Parliament to make such law. Such law remains in force for one year.

In case of national emergency owing to war or domestic disturbance, it may be necessary, in the interest of the State, to take immediate action on an All-India basis with respect to matters in the

**POWER OF PARLIAMENT  
IN EMERGENCY.**



State List, for which the State Legislature has exclusive power to make laws. Hence provision is made enabling Parliament to legislate with respect to any matter in the State List if a Proclamation of Emergency made by the President is in operation. Once the Proclamation of Emergency comes into operation, the Constitution for the period of the emergency becomes in effect unitary and Parliament can legislate on matters in all the three Lists. The laws made when the Proclamation of Emergency is in operation, to the extent to which they refer to the matters in the State List, cease to operate six months after the termination of emergency.

Parliament may make a law for regulating any matter in the State List for a State or States at the request of their Legislatures expressed in resolutions to that effect. Such law will apply to such States and also to other States which may adopt it after

POWER OF PARLIAMENT TO  
LEGISLATE FOR TWO OR  
MORE STATES BY CONSENT  
AND ADOPTION OF SUCH  
LEGISLATION BY ANY  
OTHER STATE.

expressing their request in the same manner.

Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.

LEGISLATION FOR GIVING  
EFFECT TO INTERNATIONAL  
AGREEMENTS.

If a State law is repugnant to a Union law which Parliament is competent to enact, or to any existing Indian law on a matter in the Concurrent List, the Union law, whether previous or subsequent to the State law, shall prevail, and the State law, to the extent of the repugnancy, is void. On the con-

PROVISIONS AS TO  
REPUGNANCY.

current matters or subjects a Union law normally overrides a State law. But, if the State law of Part A and Part B States on a concurrent matter or subject has been reserved for the consideration of the President and has received his assent, it prevails in that State.

To sum up, the legislative power is distributed in three Lists and in normal times Parliament legislates on matters in the Union List, the State Legislature legislates on matters in the State List, and both Parliament and State Legislature have power to legislate on matters in the Concurrent List, and the residuary power is with Parliament. If there is a conflict between the Union law and the State law on a matter in the Concurrent List, generally the Union law prevails. But it is realized that the distribution of legislative power on a federal basis may hamper the growth and development of India as a nation, hence provision is made for enabling Parliament to legislate on matters in the State List in the national interest for a definite period, and in emergency Parliament is enabled to legislate even on matters in the State List. Provision is also made enabling Parliament to legislate for two or more States on matters in the State List at their request. Thus, it is clear that the strict federal principle of distribution of legislative powers is modified and some elements of unitariness are introduced to meet the special needs of India.

## CHAPTER II

### ADMINISTRATIVE RELATIONS

The structure of government under the Constitution being federal, the respective spheres of the Union and the States are strictly delimited and the jurisdiction of each excludes the jurisdiction of the other. The States are autonomous, but the ultimate and residuary responsibility for the peace and safety of the whole of India is vested in the Government of India. The Union has to exercise its executive authority in the States with regard to the subjects in respect of which Parliament alone has power to make laws. Federal Government means dual government over the same territory. Hence there is a necessity for an effective administrative nexus between the Union and its constituent units. To achieve an effective government for the country, it is provided that the executive power of the State shall be so exercised as to ensure compliance with the laws of Parliament. The executive power of the Union extends to the giving of such directions to the States as may appear to the Government of India to be necessary for that purpose.

The executive power of every State is to be so exercised as not to impede or prejudice the exercise of the executive power of the Union. The Union Executive has power to give such directions to the States as may appear necessary for that purpose. The executive power of the Union also extends to the giving of directions to the States as to the construction and

CONTROL OF THE UNION  
OVER STATES IN CERTAIN  
CASES.

maintenance of means of communications which are of national or military importance, and also as to the measures to be taken for the protection of national railways within the States. Any expense which may be incurred by the States in carrying out these directions is to be paid by the Government of India.

The President may, with the consent of the Government of a State, entrust to that Government or its officers functions in relation to any matter to which the executive power of the Union extends.

POWER OF THE UNION  
TO CONFER AGENCY  
FUNCTIONS ON STATES.

When such powers and duties have been conferred or imposed upon a State or its officers or authority, the Government of India has to pay to the State an agreed sum to meet the costs.

The Government of India may, by agreement with the Government of any territory not being part of the territory of India, undertake any executive, legislative or judicial functions vested in the Government of such territory. But such agreement is to be governed by the law relating to the exercise of foreign jurisdiction.

JURISDICTION OF THE  
UNION IN RELATION TO  
TERRITORIES OUTSIDE  
INDIA.

As a dual government is operating in the country under the Constitution, it is necessary to provide for the acceptance of public acts of both Governments throughout the country to avoid conflict or undermining of authority. It is therefore provided that full faith and credit shall be given throughout the country to public acts, records and judicial proceedings of the Union and of all the States, and for that purpose provision is to be made by law by Parliament. To secure the effective administration of justice throughout India, it is provided that final judgments or orders

delivered or passed by civil courts in any part of India are executable anywhere within India according to law.

There are many rivers or water-courses in India running through more than one State, so that disputes among the various States relating to this subject are not unlikely.

DISPUTES RELATING TO WATERS. Provision is made to deal with such disputes. Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any Inter-State river or river valley, and may exclude the jurisdiction of the Supreme Court or any other court in any such dispute or complaint.

Under a federal Constitution two legal entities are functioning in the same area, though the spheres of both governments are distinctly delimited. But there are many problems which are common to all the States and whose solution is only possible if attempted on a uniform All-India basis. Moreover, the federal State has to function as one integrated State. Hence it is necessary to make provision to iron out differences, to remove tensions and to secure harmony between the Union Government and the State Governments, and between the State Governments whenever occasion arises. Provision is made in the shape of an Inter-State Council for this purpose. If at any time it appears to the President that the public interest would be served by the establishment of a Council charged with the duty of (a) inquiring into and advising upon disputes which may have arisen between States; (b) investigating and discussing subjects in which some or all of the States, or the Union and one or more of the States, have a common interest; or (c) making recommenda-

tions upon any such subject and, in particular, recommendations for the better co-ordination of policy and action with respect to that subject, it is lawful for the President by order to establish such a Council and to define the nature of its duties and its organization and procedure.

To sum up, the Constitution, which recognizes the autonomy of the federating units, also establishes an effective administrative nexus between the Union and the States. This nexus exists for the security and safety of the Union and the States, and to secure uniformity and co-ordination in matters of common interest, and also to deal with the inevitable disputes in certain matters in which more than one State is interested.



## CHAPTER III

### FINANCIAL RELATIONS

Finance is the life-blood of a modern State. The success or otherwise of a federal Constitution depends upon its financial provisions in relation both to the federation and to the federating units.

In every federation the problem of the distribution of the sources of revenue is one of difficulty, since two different authorities,—the Government of the federation and the Government of the unit—each with independent powers, are raising money from the same body of tax-payers. It is recognized that both the national Government and each of the federating Governments must have independent financial resources adequate to perform its exclusive functions. Each government must command the resources necessary for supplying its own wants. Distribution of powers and functions must be accompanied with distribution of resources to discharge those powers and functions. This is the underlying principle of federal finance. But it has not been followed logically in any federation, as the economic and financial conditions of each country have necessitated modifications of this principle. It has not been possible in any federation to have a clear-cut division of the sources of revenue between the federation and the federating units. The basis of the distribution of financial resources differs from federation to federation. But in every federation the principle is to distribute the sources of revenue in such a manner as to secure the financial stability of the Centre by giving it sufficient

revenues for its requirements, and also to secure to the States adequate revenues for their growing needs.

Briefly stated, the scheme of the distribution of the sources of revenue is that the Union heads and the State heads of revenue are not specified as financial heads but are included as matters in the Union Legislative List and the State Legislative List. In other words, power of taxation is included in power to legislate with respect to taxation. Thus, the taxes which can be raised by Parliament are specifically mentioned in the Union List.<sup>1</sup> The taxes which can be raised by the State Legislature are specifically mentioned in the State List.<sup>2</sup>

<sup>1</sup>These taxes are taxes on income other than agricultural income; duties of customs including export duties; duties of excise on tobacco and other goods manufactured or produced in India, except alcoholic liquors, opium, etc.; Corporation tax; taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies; estate duty in respect of property other than agricultural land; duties in respect of succession to property other than agricultural land; terminal taxes on goods or passengers, carried by railway, sea or air; taxes on railway fares and freights; taxes other than stamp duties on transactions in stock exchanges and futures markets; rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts; taxes on the sale or purchase of newspapers and on advertisements published therein.

<sup>2</sup>These taxes are land revenue; taxes on agricultural income; duties in respect of succession to agricultural land; estate duty in respect of agricultural land; taxes on lands and buildings; taxes on mineral rights; duties of excise on goods manufactured or produced in the State, other than those included in the Union List; taxes on the entry of goods into a local area for consumption, use or sale therein; taxes on the consumption or sale of electricity; taxes on the sale or purchase of goods other than newspapers; taxes on advertisements other than advertisements published in the newspapers; taxes on goods and passengers carried by road or on inland waterways; taxes on vehicles; taxes on animals and boats; tolls; taxes on professions, trades, callings and employments; capitation taxes; taxes on luxuries, including taxes on entertainments, amusements, betting and gambling; stamp duty on documents other than those mentioned in the Union List.

Some of the taxes included in the Union List are levied by the Union for the sake of uniformity. These taxes are stamp duties and such duties of excise on medicinal and toilet preparations as are mentioned in the Union List. They are collected by the States in which they are levied, and their proceeds are assigned to the States from which they are collected. The Government of India levies and collects duties in respect of succession to property, and estate duty in respect of property, other than agricultural land; terminal taxes on goods or passengers carried by railway, sea or air; taxes on railway fares and freights; taxes other than stamp duties on transactions in stock exchanges and futures markets; and taxes on the sale or purchase of newspapers and on advertisements published therein. Their net sale proceeds do not form part of the Consolidated Fund of India but are assigned to the States and are distributed among them in accordance with the principles laid down by Act of Parliament.

There are some Union taxes which are levied and collected by the Union, but their net proceeds are shared between the Union and the States. The Government of India levies and collects taxes on income other than agricultural income, but the proceeds thereof are to be distributed between the Union and the States in the prescribed manner. Provision is made for levying a surcharge for the purposes of the Union on certain taxes whose proceeds are so distributed. In view of the importance of jute in the economy of the States of Assam, Bihar, Orissa and West Bengal, these States are assigned a share of the net proceeds of export duty on jute and jute products.

The general principle of federal finance is that

both the Union Government and the State Governments should be independent of each other as regards their financial resources. But, as already pointed out, this principle could not be logically embodied in any federal Constitution, and provisions are made in different Constitutions for dividing the proceeds of certain taxes between the federal Government and the federating Governments. Even this provision was not found adequate to meet the different needs of different Governments, and it was shown by experience that, whatever may be the initial distribution of the sources of revenue, the federal Government is in a position to command more financial resources than the federating Governments, and therefore it becomes necessary for the former to give grants to the latter. Hence provision is made for grants from the Union to the States. Such sums as Parliament may by law provide shall be charged on the Consolidated Fund of India in each year as grants-in-aid of the revenues of such States as Parliament may determine to be in need of assistance, and different sums may be fixed for different States. Further, there shall be paid out of the Consolidated Fund of India as grants-in-aid of the revenues of a State such capital and recurring sums as may be necessary to enable that State to meet the costs of such schemes of development as may be undertaken by the State with the approval of the Government of India for the purpose of promoting the welfare of the Scheduled Tribes in that State or raising the level of administration of the Scheduled Areas in that State to that of the administration of the rest of the areas of that State. The State of Assam is to be paid, as grants-in-aid, sums, capital and recurring, in respect of the administration of Tribal Areas in that State for

the purpose of raising the level of administration. Thus, the provision for grants from the Union to certain States has three aspects: First, grants are to be made by the Union to the States for general purposes. Secondly, compulsory grants are to be made by the Union to the States for the promotion of the welfare of the Scheduled Tribes and for raising the level of administration of Scheduled Areas. Thirdly, compulsory grants are to be made by the Union to Assam for the welfare of the Tribal Areas and for the purpose of raising the level of administration.

To sum up, the financial resources are distributed by specifically assigning certain taxes to the Union and certain taxes to the States. Some of the taxes which are assigned to the Union are so assigned for the sake of uniformity. They are levied and collected by the Union, but the proceeds are handed over to the States. As the clear-cut distribution of the heads of taxes is not likely to secure adequate means to the States, the proceeds of certain taxes which are assigned to the Union are distributed between the Union and the States on a definite basis. The States which contribute to the export duty on jute are given a share in that duty. As all these provisions are not likely to meet the needs of the States, provision is also made for grants by the Union to the States.

Democratic government is government by the consent of the governed. The basic principle of democratic government is that taxes should be levied and collected under the authority of law, and that all moneys raised by taxes should be spent in accordance with, and under the authority of, law. This principle is embodied in the Constitution. No tax is to be levied or collected except by authority of law, which in a

democratic Constitution is the legislative expression of the collective will of the Government.

To secure complete and effective control over the public expenditure of the Union and of the States, all revenues of the Government of India and all loans raised by that Government are to be put in one fund, and all disbursements on behalf of the Government of India are to be met from that fund in accordance with law. Similar provision is also made for the revenues, loans and expenditure of the Governments of the States.

All revenues received by the Government of India, all loans raised by that Government by the issue of

CONSOLIDATED FUNDS  
AND PUBLIC ACCOUNTS OF  
INDIA AND THE STATES.

treasury bills, loans or otherwise, shall form one Consolidated Fund to be called "The Consolidated

Fund of India." All revenues received, all loans raised and all moneys received by the Government of the State, shall form one Consolidated Fund to be called "The Consolidated Fund of the State." All other public moneys received by or on behalf of the Government of India or the Government of a State are to be credited to the public account of India or the public account of the State, as the case may be. No moneys out of the Consolidated Fund of India or the Consolidated Fund of a State shall be appropriated except in accordance with law and for purposes and in the manner provided in the Constitution.

A modern State has to meet unexpected demands on its Exchequer and has also to incur expenditure which may not be discussed in the Legislature. As every item of expenditure which is to be incurred by the Government of India or the Government of a State requires previous sanction of Parliament or the State Legis-

CONTINGENCY FUND.



lature, provision is made for such contingent expenditure as may be incurred without such previous sanction. Parliament may by law establish a contingency fund to be called "The Contingency Fund of India" into which shall be paid from time to time such sums as may be determined by such law, and the said Fund shall be placed at the disposal of the President to enable him to make advances for the purposes of meeting unforeseen expenditure pending authorization of such expenditure by Parliament. Similarly, a State Legislature may by law establish a contingency fund to be called "The Contingency Fund of the State" into which shall be paid from time to time such sums as may be determined by law, and the said fund shall be placed at the disposal of the Governor or Rajpramukh of the State to make advances for the purposes of meeting unforeseen expenditure pending the authorization of such expenditure by the State Legislature.

Provision is made enabling the Government of India to enter into an agreement with a Government of a Part B State with respect to the levying and collection of any tax or duty leviable by the Government of India in such State and for the distribution of the proceeds thereof and for other matters.

#### MISCELLANEOUS FINANCIAL PROVISIONS

The Union or a State may make any grants for any public purpose, even if it is not within its legislative competence.

The custody of the Consolidated Fund of India and the Contingency Fund of India, the payment of moneys into such Funds, and the withdrawal of moneys therefrom and all other matters connected with or ancillary to these are to be regulated by law by Parliament.

Similar matters in relation to a State are to be regulated by an Act of the State Legislature.

The property of the Union is exempt from all taxes imposed by a State or by any authority within a State. The Legislature of a State is prohibited from imposing a tax on the sale or purchase of goods where such sale or purchase takes place outside the State or in the course of the import of the goods into, or export of the goods out of, the territory of India or in the course of inter-State trade or commerce. This provision is to secure freedom of trade in the country. No law of a State Legislature shall impose a tax on the consumption or sale of electricity which is (a) consumed by the Government of India, or sold to it for consumption, or (b) consumed in the construction, maintenance or operation of any Government railway.

The property and income of a State are exempt from Union taxation. But such exemption does not extend to income from property used for business, or income derived from trade or business by a Government. Sums by way of privy purse which are to be paid to the Rulers of Indian States who had surrendered their power are charged on, and paid out of, the Consolidated Fund of India and such sums are exempt from all taxes on income.

As the distribution of financial resources has to be adjusted from time to time, having regard to the

changing economic conditions and  
 FINANCE COMMISSION.      varying economic needs of the  
 Union and the federating Units, provision is made for the appointment of a Finance Commission to discharge this function. The President shall, within two years from the commencement of the Constitution and thereafter at the expiration of every fifth year

or earlier as the President considers necessary, constitute a Finance Commission which shall consist of a Chairman and four other members to be appointed by the President. Parliament determines by Act the qualifications which are requisite for appointment as members of the Commission and the manner in which they are to be selected. It is the duty of the Commission to make recommendations to the President as to (a) the distribution between the Union and the States of the net proceeds of taxes which are to be, or may be, divided between them and the allocation between the States of the respective shares of such proceeds; (b) the principles which should govern the grants-in-aid of the revenues of the States out of the Consolidated Fund of India; (c) the continuance or modification of any agreement entered into by the Government of India with the Government of a Part B State; and (d) any other matter referred to the Commission by the President in the interests of sound finance. The President shall cause every recommendation made by the Finance Commission together with any explanatory memorandum as to the action to be taken thereon to be laid before each House of Parliament. Such a Finance Commission has already made recommendations.

It may be noted that the provisions regarding the distribution of financial resources in the Constitution are sufficiently elastic to meet the needs both of the Union and of the State.

### BORROWING

The power of borrowing is incidental to government. But as there is a dual government in the country special provision regarding this power has to be made to avoid competition between the two Governments in the

matter of borrowing. The Union Government is empowered to borrow loans upon the security of the Consolidated Fund of India within such limits, if any, as may, from time to time, be fixed by Parliament by law, and to give guarantees within such limits, if any, as may be so fixed. In other words, the nature and extent of borrowing is dependent upon the Act of Parliament for the time being.

A State Government is empowered to borrow in India upon the security of the Consolidated Fund of the State within such limits as may from time to time be fixed by the law of the State, and to give guarantees within such limits. The Government of India may give guarantees in respect of loans raised by any State. If there is an outstanding loan in respect of which a guarantee has been given by the Government of India, the consent of that Government is necessary for any further borrowing. Such consent may be granted subject to such conditions, if any, as the Government of India may think fit to impose.

All properties of the Union vest in the Union and all properties of a State vest in the State. The Union and the State have power to deal with their properties and also to acquire properties.

All contracts made for the Union are to be expressed in the name of the President, and all contracts made for a State are to be expressed in the name of the Governor or the Rajpramukh. All proceedings by, or against, the Government of India are to be in the name of the Union, and all proceedings by, or against, a State Government are to be in the name of the State.

TRADE, COMMERCE AND INTERCOURSE WITHIN  
THE TERRITORY OF INDIA

The general principle of freedom of trade, commerce and intercourse throughout the territory of the Union is embodied in the Constitution, subject to limitations which might be imposed by Parliament or a State Legislature arising out of scarcity of goods or in the national or public interest. Trade, commerce and intercourse throughout the territory of India are free, but Parliament may impose such restrictions on the freedom of trade, commerce and intercourse between one State or another or within any part of the territory of India as may be required in the public interest. Discrimination or preferential treatment relating to trade and commerce is prohibited except to meet a situation arising from scarcity of goods in any part of the territory of India.

## CHAPTER IV

### SERVICES UNDER THE UNION AND THE STATES

"The system of responsible Government, to be successful in practical working, requires the existence of a competent and independent Civil Service staffed by persons capable of giving to successive Ministers advice based on long administrative experience, secure in their positions during good behaviour, but required to carry out the policy upon which the Government and Legislature eventually decide."<sup>1</sup>

As an efficient civil service is indispensable for efficient administration, the recruitment to it must be such as to secure a continuous inflow of competent men of the right type, and the conditions of service must be such as to ensure security of tenure and salary and regularity of promotion.

The Constitution makes general provisions regarding the services, and the details are left to be regulated by the Acts of the appropriate Legislatures. The terms of recruitment and the conditions of service of persons serving both

RECRUITMENT AND CONDITIONS OF SERVICE OF PERSONS SERVING THE UNION OR A STATE.

the Union and the States are not laid down in the Constitution. Parliament and the State Legislatures are, by Act, to regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union and the States. Till such provision is made, the President, for the Union services, and the Governor or Rajpramukh,

<sup>1</sup>Report of Joint Select Committee on the Indian Constitutional Reforms (1933-34), Vol. I, para 274.



for the State services, is to make rules regarding the recruitment and conditions of service of such persons.

Every person who is a member of a defence service or of a civil service of the Union or of an all-India service or holds any post connected with defence or any civil post under the Union holds office during the pleasure of the President. Similarly, a person who is a member of a State civil service or holds any civil post under a State holds office during the pleasure of the Governor or, as the case may be, the Rajpramukh of the State. No person who is a member of any civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State is to be dismissed or removed by an authority subordinate to that by which he was appointed. No such person is to be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. This is only an adoption of the principle of natural justice. But this does not apply: (a) where a person is dismissed, removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; (b) where an authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded, it is not reasonably practicable to give to that person an opportunity of showing cause; or (c) where the President or Governor or Rajpramukh, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to give to that person such an opportunity. Thus, except in some cases set out above, civil servants are protected from arbitrary dismissal or reduction in rank.

Before January 26, 1950, there were some all-India

services—the Indian Civil Service, the Indian Police Service and the Indian Administrative Services. The necessity for all-India services has been recognized, having regard to the nature of the terms of administration, and provision is made for it. If the Council of States has declared by a resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest so to do, Parliament may by law provide for the creation of one or more all-India services common to the Union and the States and regulate the recruitment and conditions of service of persons appointed to any such service. The services known on January 26, 1950, as the Indian Administrative Service and the Indian Police Service shall be deemed to be services created by Parliament. Till Parliament makes provision, all the laws in force on January 26, 1950, regarding these services are to continue in force, and the appropriate civil service rules made or continued under the Government of India Act, 1935, are to continue in force until replaced by legislation. Provision is also made for the protection of the existing officers of certain services.

Under the existing rules persons are recruited for the all-India Administrative Service and for other Indian services—Customs, Railways, Police, Foreign Service—on a basis of competitive examinations, and persons who are so recruited are posted in different States and are liable to be transferred from one State to another. The tenure of their service, their salaries and the terms of their service are all regulated by law, and they are secured fixity of tenure and regular promotion and protection from arbitrary dismissal or reduction in rank.

## PUBLIC SERVICE COMMISSIONS

The importance of a strong, competent and efficient civil service for the effective working of a democratic government has been fully recognized in the Constitution, so provision is made for Public Service Commissions for the Union and for the States.

There is a Public Service Commission for the Union and there is also one for each State, though two or more States may agree that one Public Service Commission shall serve that group of States. If the Legislatures of States by resolution request Parliament to provide for the appointment of a Joint State Public Service Commission, Parliament may provide by law for its appointment to serve the needs of those States. The Union Public Service Commission, if requested by the Governor or Rajpramukh of a State, may, with the approval of the President, agree to serve all or any of the needs of the State.

The Chairman and other members of a Public Service Commission are appointed, in the case of the Union Commission or a Joint Commission, by the President, and in the case of a State Commission, by the Governor or Rajpramukh of the State. One half of the members are persons who at the time of their appointments have held office for at least ten years either under the Government of India or the Government of a State. A member of the Commission holds office for a term of six years from the date on which he enters upon his office or until he attains the age of 65 years, or in the case of a State Commission or a Cabinet Commission, 60 years, whichever is earlier. A member may, by writing, in the case of the Union Commission or a

APPOINTMENT AND TERM  
OF OFFICE OF MEMBERS.

Joint Commission, to the President, and in the case of a State Commission, to the Governor or Rajpramukh of the State, resign his office. He may be removed from his office in the manner provided in the Constitution. A member of a Public Service Commission is, on the expiration of his term of office, not eligible for re-appointment to that office.

The Chairman or any other member of a Public Service Commission can only be removed from his office by order of the President on the ground of misbehaviour after the Supreme Court, on reference being made to it by the President, has on inquiry held, reported that he ought on any such ground to be removed. In the case of the Union Commission or a Joint Commission, the President, or in the case of a State Commission the Governor or Rajpramukh, may suspend from office the Chairman or any other member of the Commission, if a reference regarding him is made to the Supreme Court, till the Court's report is received. The President can remove from office the Chairman or any other member of the Public Service Commission if he (a) is adjudged an insolvent; or (b) engages during his term of office in any paid employment outside the duties of his office; or (c) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body. If the Chairman or any other member is or becomes in any way concerned or interested in any contract made by or on behalf of the Union or State Government or participates in any profit or benefit with the members of a corporation or company, he is guilty of misbehaviour. The President makes regulations to determine the number of members of

REMOVAL AND SUSPENSION  
OF A MEMBER OF A  
PUBLIC SERVICE COM-  
MISSION.

the Commission and their conditions of service and makes provision with respect to the number of members of the staff of the Commission and their conditions of service in the case of the Union Commission or a Joint Commission, and the Governor or Rajpramukh makes similar provisions for the State Commission. The conditions of service of a member of the Commission are not to be varied to his disadvantage after his appointment. The Chairman of the Union Commission is debarred from any further appointment either under the Government of India or under the Government of a State on ceasing to hold the office. The Chairman of a State Commission is eligible for appointment as the Chairman or a member of the Union Commission or as the Chairman of any other State Commission, but not for any other employment either under the Union or a State. A member of the Union Commission, other than the Chairman, is eligible for appointment as the Chairman of the Union Commission or of a State Commission, but not for any other employment under Government. A member of a State Commission may be appointed the Chairman or as any other member of the Union Commission or the Chairman of any other State Commission, but is not eligible for any other employment under Government.

The Union and the State Service Commissions are to conduct examinations for appointments to the Union and the State services. If requested by two or more States, the Union Commission must assist those States in framing and operating schemes of joint recruitment for any services for which candidates possessing such qualifications are required. The President or the Governor or Rajpramukh, as the case

FUNCTIONS OF THE  
PUBLIC SERVICE COM-  
MISSIONS.

may be, makes regulations specifying the matters relating to the services and the posts to which they make appointments with respect to which it is not necessary to consult the Public Service Commission. Except for these matters the Union Commission or the State Commission is to be consulted: (a) on all matters relating to methods of recruitment to civil services and for civil posts; (b) on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers, etc.; (c) on all disciplinary matters, including memorials or petitions; (d) on any claim for the award of a pension in respect of injuries sustained by a person while serving under the Government of India or a State in a civil capacity, and any question as to the amount of such award.

The Public Service Commission has to advise on any such matters referred to them and on any other matter which the President or the Governor or Rajpramukh may refer to them. The Commission is not to be consulted with respect to the reservation of appointments or posts in favour of any backward class of citizens and regarding the claims of Scheduled Castes and Scheduled Tribes to services and posts. Additional functions as respects the services of the Union or the State may be assigned to the Union Commission or a State Commission by an Act of Parliament or by an Act of a State Legislature. All expenses of the Union or State Public Service Commission, including any salaries, allowances and pensions payable to or in respect of the members or staff of the Commission, are charged on the Consolidated Fund of India or the Consolidated Fund of the State. In view of the importance of the functions of the Public Service Commission, and to secure



their independence and integrity, the tenure of office of members is fixed, and the temptation for further promotion on their ceasing to hold office is removed, and their salaries are secured as they are charged on the Consolidated Fund and thus are not subject to the vote of the Legislature. All these provisions are intended to make them independent of the Executive.

The Union Public Service Commission has annually to present a report of its work to the President, who has to cause the report to be placed before Parliament. Similarly, the State Commission has annually to present a report to the Governor or Rajpramukh, who causes it to be placed before the State Legislature. The report is accompanied by a memorandum explaining, as respects the cases, if any, where the advice of the Commission was not accepted, and the reasons for such non-acceptance.

## CHAPTER V

### OFFICIAL LANGUAGE

#### LANGUAGE OF THE UNION

In a State which is homogeneous and where only one language is spoken, as in England, there is no constitutional problem of national language. But in India this problem exists and presents many difficulties. English was the official language for more than a century, and as such it became the common language of the country, though in fact it was spoken by only a little over one per cent of the population. India is inhabited by many communities and tribes, speaking a dozen main languages and over two hundred minor dialects. Hindi, however, is spoken by the largest number of people. The regional languages also are firmly rooted and are the vehicles of indigenous literature and culture. They constitute the very instrument of expression of the life and the traditions of the masses. If India is to be moulded into a nation and a homogeneous State, she must have a common national language, as it is the prevalence of a common language that generates an atmosphere conducive to the moulding of a nation. It is recognized that the English language cannot immediately be replaced as the official language. It is hoped, however, that if strenuous efforts are made, within a period of about fifteen years, Hindi may become sufficiently effective and adequate to serve as the national language. It needs enrichment and expansion and it requires to be introduced and spread in various parts of India. The decision of

the framers of the Constitution regarding the official language and the regional languages is a most important decision, as the moulding of the nation depends upon its implementation. It is essentially a compromise, but it is at once statesmanlike and practical.

## I. OFFICIAL LANGUAGE OF THE UNION

The Constitution provides that the official language of the Union shall be Hindi in Devanagari script, and the form of numerals for official purposes shall be the international form of Indian numerals. But for a period of fifteen years from the commencement of the Constitution the English language is to continue to be used for all the official purposes of the Union for which it was being used immediately before such commencement. But during this period of fifteen years the President may by order authorize the use of the Hindi language in addition to the English language and of the Devanagari form of numerals in addition to the international form of Indian numerals for any of the official purposes of the Union. Notwithstanding these provisions, Parliament may by law provide for the use, after the period of fifteen years, of (a) the English language, or (b) the Devanagari form of numerals, for such purposes as may be specified in the law.

To examine the implementation of the provision regarding the official language, the President has, at the expiration of five years from the commencement of the Constitution and thereafter at the end of ten years from the commencement, by order to constitute a Commission consisting of a Chairman and such other members representing the different

COMMISSION AND COMMITTEE OF PARLIAMENT ON OFFICIAL LANGUAGE.

languages specified in the Eighth Schedule<sup>1</sup> as the President may appoint. It is the duty of the Commission to make recommendations to the President as to the progressive use of the Hindi language for the official purposes of the Union; restrictions on the use of the English language for all or any of the official purposes, of the Union; the form of numerals to be used; and any other matter as regards the official language of the Union and the language for communication between the Union and the States or between one State and another. The recommendations of the Commission are to be examined by a Committee of thirty members—twenty being members of the House of the People and ten of the Council of States. The Committee is to report to the President, and he is to issue directions in accordance with the report or any part thereof.

## II. REGIONAL LANGUAGES

The Legislature of a State may by law adopt any one or more of the languages in use in the State or Hindi as the language or languages to be used for all or any of the official purposes of that State. Till provision is made, the English language continues to be used for official purposes as it was used before the commencement of the Constitution. The official language of the Union for the time being is the official language for communication between the Union and the States or one State and another. If some States agree to use Hindi for communication between themselves they may do so.

<sup>1</sup>Assamese, Bengali, Gujarati, Hindi, Kannada, Kashmiri, Malayalam, Marathi, Oriya, Punjabi, Sanskrit, Tamil, Telugu, Urdu.

### III. LANGUAGE OF THE SUPREME COURT, HIGH COURTS, ETC

In spite of the provisions regarding the official language, until Parliament by law otherwise provides, (a) all proceedings in the Supreme Court and in every High Court, (b) the authoritative lists (i) of all Bills to be introduced in Parliament or the State Legislatures (ii) of all Acts passed by Parliament or the State Legislatures and of all Ordinances promulgated by the President or the Governor or Rajpramukh of a State, and (iii) of all orders, rules, regulations, bye-laws issued under the Constitution or under any law, are to be in the English language. But with the previous consent of the President, the Governor or Rajpramukh of a State may authorize the use of the Hindi language, or any other language used for the official purposes of the State, in the proceedings of the High Court for that State. But the judgment, decree or order passed or made by the High Court shall be in the English language. Bills are to be in the English language, but where any other language is authorized and used, a translation of the same in the English language is to be published by the authority of the Governor or Rajpramukh. For a period of fifteen years no Bill or amendment making provision for the language to be used in the Supreme Court, etc., is to be introduced or moved without the previous sanction of the President.

### IV. SPECIAL DIRECTIVES

Under a democratic government every citizen has a right to make a representation for the redress of any grievance. Nearly 85 per cent of the population do

not know how to read and write, and the remaining 15 per cent mostly know only the regional language. Hence it is provided that every person is entitled to submit a representation for the redress of any grievance to any office or authority of the Union or a State in any of the languages used in the Union or in the State as the case may be. It is the duty of the Union to promote the spread of the Hindi language and to develop it.

All these provisions are intended to promote an easy, smooth and effective transition from the English language to Hindi as the official language of the Union and as the language for inter-State communication. If the provisions are implemented with courage and foresight, Hindi will in practice be the official language of the Union and will also be an effective national language within fifteen years.



## CHAPTER VI

### EMERGENCY PROVISIONS

Under a federal Constitution there is a division of legislative and executive powers: the federal laws and authority on the one hand, and the law and authority of the constituent States on the other. Divided authority is, of course, always weak. Its weakness becomes apparent in an emergency when immediate action which may affect all the constituent States becomes necessary for the safety and security of all. Executive action, as already pointed out, depends upon legislation. To meet this situation, provision is made to give extraordinary powers to the President in an emergency.

If the President is satisfied that a grave emergency exists whereby the security of India or any part of its territory is threatened, whether by war or external aggression or internal disturbance, he may, by Proclamation, make a declaration to that effect. The Proclamation of Emergency may be revoked by a subsequent Proclamation. It is to be laid before each House of Parliament. It ceases to operate at the end of two months unless approved within that period by resolutions of both Houses of Parliament. The action which the President may take in an emergency without reference to Parliament has to be approved by Parliament if it is to have effect beyond the period of two months. Such a Proclamation of Emergency may be made before the actual occurrence of war or of any aggression or disturbance if the President is satisfied that there is imminent danger thereof.

While a Proclamation of Emergency is in operation, (a) the Union Government can give directions to any State as to the manner in which the executive power is to be exercised; and (b) Parliament can make laws with respect to any matter in the State List and confer powers and impose duties on Union officers as respects those laws. The President is also empowered to modify the provisions relating to distribution of revenues between the Union and the States for a period not exceeding the expiration of the financial year in which the Proclamation ceases to operate. Thus it is clear that during the emergency period the Constitution functions entirely on a unitary basis.

The President is invested with extraordinary powers in case of emergency in the States which threatens the security of India by war or domestic disturbance. If the President, on receipt of a report from the Governor or Rajpramukh of a

PROVISIONS IN CASE OF  
FAILURE OF CONSTITU-  
TIONAL MACHINERY IN  
STATES.

State or otherwise, is satisfied that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of the Constitution, he may, by Proclamation, (a) assume to himself all or any of the functions of the Government of the State and all or any of the powers of the Governor or Rajpramukh or any body or authority in the State other than the Legislature of the State; (b) declare that the powers of the Legislature of the State shall be exercised by or under the authority of Parliament. Any such Proclamation may contain incidental and consequential provisions suspending the operation of any of the provisions of the Constitution except the provisions relating to High Court.

Such a Proclamation may be revoked or varied by subsequent Proclamation. Every Proclamation ceases to operate at the end of two months, unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament. There is a provision for the extension of the Proclamation, and the effect of it is that a State may be governed under a Proclamation with the approval of Parliament for a period of not more than three years. When, under a Proclamation of Emergency regarding the State, Parliament becomes competent to make laws for the State, Parliament may confer that power on the President, and he may delegate it to any other specified authority, and either the President or such authority may make all laws, including laws regarding taxation. In other words, when under a Proclamation it is declared that the powers of the Legislature of a State are exercisable only by Parliament or by the President or any other authority so empowered, both the legislative and executive fields of the State are transferred to the Union.

Any law made by Parliament or the President under a Proclamation which they would not otherwise have been competent to make shall to the extent of the incompetency cease to have effect on the expiration of one year after the Proclamation has ceased to operate except for things done or omitted to be done before the expiration of the period.

Emergency necessitates crisis legislation which requires the taking of all kinds of measures which are necessary for the safety of the Union. Such measures are likely to affect the fundamental rights of citizens guaranteed by the Constitution. The very existence of these rights may hinder or embarrass

SUSPENSION OF PROVISIONS  
OF ARTICLE 19 DURING  
EMERGENCIES.

the requisite action during the crisis. As the enjoyment of such rights is entirely dependent upon the existence and the safety of the Union, it may be expedient during a crisis to suspend the rights and the guarantees with respect to them. While a Proclamation of Emergency is in operation, Parliament and the Union Government and the State Legislatures and the State Governments are not under any disability to make any law or to take any executive action which they would, but for the provisions regarding the fundamental rights, be competent to make or to take. In other words, when the Proclamation of Emergency is in operation, the Government can abridge or take away the right to freedom. But any law abridging the right to freedom ceases to have effect as soon as the Proclamation ceases to operate.

When a Proclamation of Emergency is in operation, the President may by order suspend the remedies for the enforcement of fundamental rights. In other words the right of a citizen to move the Supreme Court and High Courts for the issue of orders or directions or writs for the enforcement of fundamental rights can be suspended by the President for the period of emergency or a specified shorter period. The orders suspending these remedies may extend to the whole or any part of India. Every such order is to be placed before each House of Parliament as soon as may be after it is made.

If the President is satisfied that a situation has arisen whereby the financial stability or credit of India or any part thereof is threatened, he may by a Proclamation make a declaration of financial emergency. During the period

SUSPENSION OF THE REMEDIES FOR REINFORCEMENT OF FUNDAMENTAL RIGHTS.

PROVISIONS AS TO FINANCIAL EMERGENCY.

this Proclamation is in operation, the Union Government can give direction to any State to observe such canons of financial propriety as may be specified in the directions, and give such other directions as the President may deem necessary and adequate for the purpose. Such directions may include a provision requiring the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of the State, and a provision requiring Money Bills to be reserved for the consideration of the State Legislature. The President may during the period of Proclamation of financial emergency issue directions for the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of the Union including the Judges of the Supreme Court and the High Courts.

We have seen that there are provisions for three different kinds of emergency: (1) emergency affecting the safety of the whole of India; (2) emergency regarding a particular State owing to the breakdown of the constitutional machinery; and (3) financial emergency. Ample provisions are made to meet all these cases, and while these emergencies exist the Union works on a unitary basis. The cumulative effect of the emergency provisions is that during the period of emergency the President is vested with extraordinary powers both as regards legislative and executive authority and also as regards the fundamental rights of citizens and finance. It is clear that during the period of political, constitutional or financial emergency, the State Governments are in effect merely subordinate Governments and function as part of a unitary structure.

## CHAPTER VII

### ELECTIONS

The body of electors is called the electorate. Under the system of democratic government which is embodied in the Constitution, every citizen has a right to take part in the government of the country, and this right is secured by the adoption of adult suffrage, under which every citizen of 21 years of age has a right to vote and elect his representatives to the Legislatures. The direct part which the citizen plays is confined to the election of the members of the Legislatures at stated intervals and to controlling their action by public opinion.

A democratic constitution functions through elected representatives (the elected members of Parliament and of the State Legislatures), hence elections of these persons are a normal feature of its working. The Legislature represents the electorate, which in its turn is composed of the citizens of the Republic. As democratic government is government by a majority, elections are usually contested by members of different parties, and disputes among the candidates in connection therewith are not rare. Hence it is necessary that the superintendence, direction and control of the electoral rolls and the conduct of elections should be vested in an independent Election Commission which may function without being influenced by any party politics or swayed by political pressure. Provision is therefore made for such a Commission.

The elections to the House of the People and to the Legislative Assembly of every State are to be on the



**ELECTORATE OR ELECTION  
ON THE BASIS OF ADULT  
SUFFRAGE.**

basis of adult suffrage; that is to say, every person who is a citizen of India and who is not less than twenty-one years of age on such date as may be fixed by any law of the appropriate Legislature and is not otherwise disqualified under the Constitution or any law on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, is entitled to be registered as a voter at any such election. The age is fixed at twenty-one years instead of eighteen for the sake of safety and on the ground of the expediency of securing maturity of judgment. This is one of the most important provisions of the Constitution. Its importance and significance can be easily appreciated when it is remembered that under the Constitution Act of 1935 hardly 14 per cent of the population was enfranchised, while under this Constitution more than 50 per cent of the population (17 crores) is enfranchised. When it is also remembered that 85 per cent of the population is illiterate, its significance is further emphasized. Reliance on the sound common sense of the masses is the basis of this great liberal step. It is a bold and hazardous experiment in a country where democracy is not yet firmly rooted in the soil. But the elections of 1952—the greatest experiment in parliamentary government—have justified the faith put in the masses of India.

The basic principles of the election are laid down in the Constitution and the details are provided by Act of Parliament. Parliament is empowered to make provision with respect to all matters relating to or in connection with elections to either House of Parliament or either House of the Legislature of a State, including the preparation of electoral rolls, the delimitation of

constituencies and all other necessary and incidental matters. Thus Parliament has power to provide even for the elections to the State Legislatures. This provision is intended to secure uniformity of procedure throughout India. Provision for elections is made by the Representation of the People Act.

The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and the State Legislatures and of elections to the offices of President and Vice-President, including the appointment of Election Tribunals for the decision of doubts and disputes arising out of or in connection with elections to Parliament or State Legislatures are vested in an Election Commission. The Commission consists of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix. They are appointed by the President. When any other Election Commissioner is appointed, the Chief Election Commissioner acts as the Chairman of the Commission.

It is to be noted that there is only one Election Commission for the Union as well as the States. To enable the Commission to cope with its work, provision is made for the appointment of Regional Commissioners who are appointed before each general election by the President after consultation with the Election Commission, to assist that Commission in the performance of its functions.

Elections constitute the pivot of democratic government, so those who are in charge of them must be independent. To secure their independence and

integrity they are guaranteed fixity of tenure and other conditions of service. The conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners are determined by the President by rule. The Chief Election Commissioner cannot be removed from his office except in like manner and on the like grounds as a Judge of the Supreme Court, and the conditions of his service cannot be varied to his disadvantage after his appointment. Further no other Election Commissioner or Regional Commissioner can be removed from his office except on the recommendation of the Chief Election Commissioner. The President, or the Governor or Rajpramukh of a State, when so requested by the Election Commission, has to make available to the Election Commissioner or to a Regional Commissioner such staff as may be necessary for the discharge of the functions of the Election Commission.

## CHAPTER VIII

### SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES

Certain classes of people, owing to their backwardness, require special provisions to enable them to enjoy the benefits of democracy, and the Constitution has accordingly made these provisions. It is enough to state them.

Seats are reserved in the House of the People for (a) the Scheduled Castes, (b) the Scheduled Tribes, except the Scheduled Tribes in the Tribal Areas of Assam, (c) the Scheduled Tribes in the autonomous districts of Assam, in proportion to their numbers. If the President is of opinion that the Anglo-Indian community is not adequately represented in the House of the People, he may nominate not more than two members of that community to that House.

Seats are reserved for the Scheduled Castes and Scheduled Tribes (except those in the Tribal Areas of Assam) in the Legislative Assembly of every Part A and Part B State in proportion to their numbers in the State. If the Governor or Rajpramukh of a State is of opinion that the Anglo-Indian community is not adequately represented in the Legislative Assembly he may nominate such number of the members of the community as he considers appropriate.

<sup>1</sup>Scheduled Castes or Scheduled Tribes are those which are specified by the President in separate Schedules in a notification issued by him under the Constitution.

The provision for the reservation of seats is only for ten years.

It is provided that the claims of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration in the making of appointments to services and posts in connection with the affairs of the Union or of a State." For the first two years after the commencement of the Constitution appointments of members of the Anglo-Indian community to posts in the railway, customs, postal and telegraph services of the Union are to be made on the same basis as before August 15, 1947, and they are to be progressively reduced so that at the end of ten years the reservation shall cease. For the first three years the Anglo-Indian community is to get the same educational grants as before August 15, 1947, but they are to be progressively reduced so that at the end of ten years they shall cease.

To give continuous effect to the provisions for the Scheduled Castes and the Scheduled Tribes, a Special

SPECIAL OFFICER FOR  
MINORITIES FOR THE  
UNION AND THE STATES.

Officer is to be appointed by the President to report to him from time to time upon the working of the safeguards provided for these classes. His report is to be laid before Parliament.

At the end of ten years from the commencement of the Constitution or at any earlier time, the President is to appoint a Commission to report on the administration of the Scheduled Areas and the welfare of the Scheduled Tribes in Part A and Part B States.

With a view to raising the social and educational level of the backward classes, the President is to appoint a

COMMISSION FOR BACK-  
WARD CLASSES.

Commission to report on their conditions and the steps to be taken to improve them. The

report of the Commission is to be laid before Parliament.

It is significant to note that all the provisions relating to certain classes are made on an all-India basis. These provisions will cease to operate after the objects in view have been achieved.

### MISCELLANEOUS

As the executive heads of the Union and the State, the President and the Governor or Rajpramukh are given immunity from proceedings in courts. They are not answerable to any court for the exercise and performance of the powers and duties of their offices, though the President is subject to impeachment by Parliament. They are immune from criminal and civil proceedings and from process for arrest or imprisonment.

The Rulers of the former Indian States enjoyed certain rights and personal privileges. Now they are Rulers only in name, but the Constitution provides that in the exercise of the power of Parliament or a State Legislature to make laws or in the exercise of the executive power of the Union or of a State due regard shall be had to their personal rights, privileges or dignities. An Indian Ruler is one who is so recognized for the time being by the President.

In view of the importance of the major ports and aerodromes for the defence and safety of the Union special provision is made for them, so that they may be administered by specific laws.

Where any State has failed to comply with, or to give effect to, any directions given in the exercise of the

PROTECTION OF PRESIDENT, GOVERNORS AND RAJPRAMUKHS.

RIGHT AND PRIVILEGES OF RULERS OF INDIAN STATES.



EFFECT OF FAILURE TO  
COMPLY WITH DIREC-  
TIONS GIVEN BY THE  
UNION.

executive power of the Union, the President may hold that the Government of the State cannot be carried on in accordance with the provisions of the Constitution, and he may assume all or any of the functions of the Government of that State, and the powers of the State Legislature shall be exercised by Parliament.

## CHAPTER IX

### THE AMENDMENT OF THE CONSTITUTION

The federal Constitution, "which is an indissoluble compact between the federation and the federating units, is the fundamental law of the country. Under it the powers are divided between the Government for the whole country and the Governments of its parts (States). These Governments are independent of each other in their respective spheres. They are co-ordinate. These being the essential traits of a federal Constitution, it cannot be altered or amended by ordinary legislative process and can be altered only by the special mode prescribed in the Constitution itself. A federal Constitution is generally rigid<sup>1</sup> from the very nature of the polity and is difficult of amendment. Further, a Constitution which is drawn up to meet the needs of a society at a particular point of time, under the then prevalent political mood and the existing conditions of the country, cannot be adequate to meet the growing and changing needs of a modern State. Hence the necessity of prescribing the mode of amendment of the federal Constitution, which may be at once rigid and flexible so as to secure the stability of the fundamental law and at the same time make it able to grow and keep pace with the times. Drawing upon the experience of other federations, the framers of the Indian Constitution have prescribed a mode of amendment which is simple and reasonably elastic.

<sup>1</sup>A Constitution is called flexible if it can be amended by ordinary legislative process; it is called rigid if its amendment requires a special process.

The principles of Parliamentary government and federalism which run through the Constitution are recognized in the provision for its amendment. A State Legislature cannot initiate any proposal for an amendment of the Constitution. It can be initiated only by the introduction of a Bill for the purpose in either House of Parliament. When the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it is presented to the President for his assent, and upon such assent being given, the Constitution stands amended in accordance with the terms of the Bill. Thus except for the amendment of some vital parts of the Constitution for which further safeguard is provided, the amendment of all other parts of the Constitution can be carried out by Parliament, provided it receives the approval of an absolute majority of the membership of each House and a two-thirds majority of those present and voting as distinguished from the simple majority required for ordinary legislation.

As regards certain vital parts of the Constitution, extra safeguards are provided in the amending process. If the amendment seeks to make any change in the provisions regarding the election and the manner of election of the President, the extent of the executive power of the Union and the States respectively, High Courts in Part A and Part B States, the Union Judiciary and the High Courts, the legislative relations between the Union and the States, any of the three Legislative Lists, the representation of the States in Parliament, or the article dealing with amendment, the amendment also requires ratification by the Legisla-

tures of not less than one-half of the Part A and Part B States by resolutions to that effect passed by those Legislatures, before the Bill making provision for such amendment is presented to the President for assent.

Thus Parliament is competent to amend the whole Constitution by following the prescribed mode of amendment without seeking ratification or approval of the amendment by the people. Taking the procedure as a whole, the process of amendment of the Constitution is comparatively simple and reasonably elastic. Of all the federal Constitutions in the world, the Indian Constitution is least rigid.

Within eighteen months of the working of the Constitution, by reason of judicial decisions regarding the true effect of the fundamental rights of freedom of speech and right to property, certain existing laws were declared void. This created difficulty. As the interpretation put on the right to freedom of speech was very wide and as the abolition of zamindari was thought necessary, the Articles dealing with right to freedom of speech and right to property were amended by Parliament by the Constitution (First Amendment) Act, 1951.

## CHAPTER X

### WORKING OF THE CONSTITUTION

Under the Constitution India has adopted a democratic or Parliamentary form of Government both at the Centre and in the States—government by a party commanding a majority in the lower House of the Legislature elected on a basis of adult suffrage. The successful working of such a government postulates the existence of well organized parties—two or more—divided by broad issues of policies. It also postulates the existence of an effective Opposition, as a party in opposition to the party in office is an essential of Parliamentary democracy. A well organized and effective Opposition ready to form an alternative Government is necessary for the effective and healthy working of responsible government. The results of the general elections both for Parliament and the State Legislatures have shown that, except in two States, the Congress party has an overwhelming majority both in Parliament and in the State Legislatures, and the other party or parties taken together does not and do not constitute an effective Opposition and is not and are not in a position to form an alternative Government. As the existence of an effective Opposition is a real check on the rule of the majority, and as no such Opposition is in being, the actual working of responsible government both at the Centre and in the States may not be on normal lines. But the experience since 1950 indicates that though there are no well organized parties and no effective Opposition, the Parliamentary system has, on the whole, been working satisfactorily. It is

being increasingly realized that the successful working of popular government rests not so much on a written Constitution as on the gradual building up of convention and traditions and on majorities practising toleration and minorities patience. The election of the members of Parliament and the State Legislature on a basis of adult suffrage is a great experiment, but the experiment is in the right direction. The future of Parliamentary or responsible government in India appears to be hopeful and encouraging.



## **Section III**

### **LOCAL ADMINISTRATION**

"Administration, derived from a Latin word which means service, denotes the technical and professional work of service done by an expert and professional staff which realizes in detail, for the purposes of daily life and regular routine, the general lines of policy laid down by those who conduct the government and more especially by those who conduct the executive government."

SIR ERNEST BARKER



## CHAPTER I

### DISTRICT ADMINISTRATION IN INDIA

The most important unit of administration in India is the district, which is the keystone of the whole administrative structure. Every inch of soil (except Presidency towns and some small areas) forms part of a district. The average size of the district is 4,075 square miles, and the average population is 1,000,000. The actual districts vary greatly in size and density of population, but very few have an area less than 1,500 square miles or a population less than half a million.

#### THE DISTRICT OFFICER

At the head of every district there is a District Officer, known in some provinces as the Collector and in others as the Deputy Commissioner. He is generally a member of the Indian Civil Service or the Indian Administrative Service. He is, in the eyes of the most of its inhabitants, "the Government." The District Officer has a dual capacity. He is both the Collector (the principal revenue officer) and the chief magistrate. As Collector he is the head of the revenue organization and is concerned with the land and land revenue and with all matters affecting the conditions of the peasantry. In all districts he can at any time be in touch through his revenue subordinates with every inch of the district. This revenue organization serves the specific purposes of collecting the revenue and of keeping the peace. It also simultaneously discharges easily and effectively an immense number of other

duties. It deals with the registration, alteration and partition of holdings, the settlement of disputes, the management of indebted estates, loans to agriculturists, and above all famine relief. Because it controls revenue, which depends on agriculture, the supreme interest of the people, it serves also as a general administrative staff.

The Collector in his capacity as a District Magistrate has first-class powers and can imprison for two years and fine up to Rs. 1,000. In

AS MAGISTRATE.

practice he does not try many criminal cases though he supervises the work of all the other magistrates of the district. The District Magistrate, as the chief executive authority, is primarily responsible for the maintenance of law and order and the criminal administration of the district, and for this purpose the police force is under his control and direction. The District Superintendent of Police is his assistant for police purposes, and it is his duty to keep the Collector fully informed both by personal confidence and by special reports on all matters of importance concerning the peace of the district and the prevalence of crime. The District Superintendent of Police is the head of the District Police Force. He is responsible for all matters relating to its internal management and for the maintenance of discipline. In effect, the two officers work together.

For the proper discharge of his duties the Collector-Magistrate must be accessible to and intimately acquainted with the inhabitants of his district, and he therefore spends as a rule several months of the year in camp visiting all parts of his district. The real source of the influence of the District Officer is the camp. For the administration of Indian villages "the

tent is mightier than the pen," and so it is highly desirable that the District Officer should be relieved of some of his desk-work to enable him to spend more time in camps.

Each district has its body of heads of departments, the District and Sessions Judge, the District Superintendent of Police, the civil surgeon, the conservator of forests, the executive engineer—each of whom is under his Provincial departmental chief. But except in matters of pure routine, the Collector must be informed of almost every activity in all these departments because it impinges at some point upon the operation of the governmental agency in the district. In all States the District Officer co-ordinates the activities of the various governmental agencies in his district. On him and off his subordinates the Government still depends for maintaining contact with the whole population in his area and for information concerning its general welfare.

Thus the District Officer derives his standing from the combination in one person of the chief administrative and magisterial authority of the district.

The district, being too large to manage as a single unit, is subdivided for administrative purposes. The District

ASSISTANT OR  
DEPUTY COLLECTOR.

Officer administers these subdivisions with the assistance of a large staff of subordinate officers, some of whom are his assistants at headquarters while others hold charge of portions of the district. In general the district is split up into three or four subdivisions under junior officers of the Indian Civil Service or the Indian Administrative Service, known as Assistant Collectors, or Members of the State Service, styled Deputy Collectors. A subdivision consists of three or four

units called in nearly all States Talukas or Tahsils, and about four to ten of these form a district. A sub-divisional officer has, under the control of the District Officer, general charge of the executive and magisterial administration of his sub-division. He is a magistrate with first-class powers. He also supervises land revenue administration.

A Taluka or Tahsil is in charge of a revenue officer and magistrate styled Mamlatdar or Tahsildar. He

MAMLATDAR OR  
TAHSILDAR.

belongs to the subordinate service and is a magistrate either with first- or second-class powers. He must know the conditions of every village in his Taluka or Tahsil. To achieve this object he regularly spends some months in camp touring his area. The Mamlatdar has his parallel in all services in the Taluka, such as the Inspector of Police, the Inspector of Excise, the Overseer and the Medical Officer.

A Taluka or Tahsil consists of seventy to a hundred villages. The village is the lowest administrative unit in India. Even today the village organization finds its place at the basis of the administrative

PATEL, TALATI  
AND CHOWKIDARS.

system and plays a very important part in the social life of the country. The village is in charge of a headman or Patel, who is generally a hereditary occupant of the post. He collects land revenue and looks after law and order in the village. In some States, particularly in Madras and Bombay, he is also a petty magistrate. The other village official is the village accountant, known as the Talati or Kulkarni or Patwari, who keeps the accounts, registers of holdings and in general all records connected with land revenue. Every village has a chowkidar or watchman who is a



rural policeman. There is also a hereditary village servant under the Patel.

Thus the administrative system in India is based on the repeated sub-division of territory, each administrative area being in the charge of a responsible officer who is subordinate to the officer next in rank above him.

#### LOCAL INFLUENCE OF DISTRICT OFFICER

The Collector of a district enjoys great prestige among the inhabitants whom he serves. Before 1919 he was also the Chairman of the District Local Board. His official authority is augmented by the constant exercise of advice and direction in matters where he is expected to give a lead. He wields large powers of patronage; he is responsible for making a large number of minor appointments, such as those of village headmen and accountants, revenue officials and office clerks. His recommendations for honorary magistrateships and nominated memberships of local bodies are ordinarily accepted. He grants seats at ceremonial functions, such as Durbars. He thus commands great influence, which is often used to ease the situation in the case of conflict between communities. In the words of the Simon Commission Report: "It is not by virtue of his powers as District Magistrate alone that he can succeed; it is only because, as Collector, he has numerous sources of influence that can be brought to bear in the right quarter. If his range of influence were less varied he would find it more difficult to prevent trouble." On every one of the innumerable matters which may require the orders, assistance, advice or interference of Government, it is to the District Officer that Government as well as the ordinary citizen naturally looks.

## RELATION OF THE DISTRICT OFFICER TO THE STATE ADMINISTRATION AS A WHOLE

For the purposes of administration every State is composed of districts which, in all States except Madras, are combined in groups of some four to eight called divisions. These divisions are in charge of Commissioners, who are generally senior members of the Civil Service. They are intermediaries or links between the Collector, the head of a district, and the State Government. They are not merely supervisors; they have specific powers of their own. They act as courts of appeal in revenue cases. In some States they exercise almost direct control over certain branches of district work, particularly in relation to local self-governing bodies. Public opinion, however, regards them as unnecessary links in the administrative chain and has demanded the abolition of these posts on financial grounds. In some States they have already been abolished.

## BOARDS OF REVENUE

Between the Commissioner and the State Government in all States except Bombay there is a Board of Revenue, or its equivalent, a Financial Commissioner. In their administrative capacity, these constitute the chief revenue authority of the State and relieve the State Government of much detail work. In their judicial capacity they form an Appellate Court for the increasing volume of revenue suits and often of rent suits. But for other purposes than revenue the State Government usually relies on its Commissioners and Collectors. The introduction of responsible government has naturally led to the transfer to the State Government

of some of the independent powers formerly exercised by the Board of Revenue.

### THE SECRETARIAT

A large part of Government business, including normally all communications with the general public, is done in the districts by the District and Departmental officers who are constantly on tour within their areas. At headquarters the State Government has a secretariat located in a single building. Here the Governor and all the Ministers have their offices. The secretariat is, for the convenience of its own internal working, subdivided into departments. One or more of these departments are in charge of a Secretary to the Government, who is under a Minister. Thus all departments which are under the Ministers are worked through the Secretaries.

## CHAPTER II

### VILLAGE ORGANIZATION

Nine-tenths of India's population live in villages. Throughout the greater part of India the village constitutes the primary administrative unit. From the villages are built up the larger administrative units—the Talukas or Tahsils, the sub-divisions and the districts. It is, therefore, necessary to know how these villages are organized, and for the proper understanding of this a general description of an Indian village is essential.

The typical Indian village has a central residential site and an open space for a pond and a cattle-stand.

There is also a village chavdi or meeting-place. Generally there is a central village well. There is also a school in many villages, and almost invariably there is a religious building, a temple, a shrine or a mosque. The mud (in some places brick) or bamboo houses of the villagers are huddled together on this central site. Stretching around this nucleus lie the village lands, consisting of a cultivated area and, in some villages, grounds for grazing and wood-cutting. With the increasing hunger for land the grounds for grazing and wood-cutting have disappeared. The cultivated area provides the means of livelihood to the villagers. The cultivator's house is in the village, and the fields he tills are scattered over the whole area of the village. Thus there is no visible link between the home of the individual cultivator and the fields he tills. In the south and the east the fields

or agricultural holdings average about five acres; in other States, not more than half of them exceed this limit. In certain parts of India—in the greater part of Assam and on the west coast of the Madras State—the village as described here does not exist and the people live in small collections of houses or in separate homesteads.

Most of these villages have not yet been touched by metalled roads or railways. Post offices are many miles apart and telegraph offices are still more distant from one another. But the rapid introduction and development of bus traffic in all parts of India is changing the life of the villagers. Except in the north-west the whole country is dependent on the monsoon. All major agricultural operations are fixed and timed by the nature and distribution of the rains. Under the prevailing system of tillage, the small and scattered holdings do not furnish occupation for more than half the year.

In every village one finds some persons with a permanent title in land either as owners or tenants with occupancy rights. There are also agricultural labourers who actually cultivate land for themselves. We find members of depressed classes who are mainly engaged in crafts such as leather work or in tasks regarded as menial. Some of them work in the fields only in times of pressure. In some villages there are skilled artisans—potters who supply earthen vessels, carpenters or ironsmiths who provide and repair water-lifts. There are always one or two shops which supply the household requirements. The owners of these shops are also generally moneylenders. They purchase the village produce and constitute a commercial link between the village and the outside world.

Indian villages formerly possessed a large degree of local autonomy, which they maintained for centuries. When the British became the rulers of India they found these villages "small republics." But this autonomy has now disappeared owing to the establishment of civil and criminal courts, the present land revenue and police organization, the increase of communications and the growth of individualism. The traditional self-sufficiency of the village is fast disappearing. Its corporate life based on common civil interest and common traditions is now only a thing of the past. Recently attempts have been made in various States to recreate this corporate life through the Village Panchayats. Having regard to their importance, one of the Directive Principles of the Constitution provides that the State shall take steps to organize Village Panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.

We have given a general and composite picture of Indian villages, which may be classified under two heads according to the system of assessment of land:—

THE TYPES OF  
VILLAGES.

### (1) The Rayotwari Village.

The Rayotwari or separate village is the prevalent form outside Northern India. Here the revenue is assessed on individual cultivators. The village government vests in the hereditary headman, Patel or Reddi, who is responsible for law and order and for the collection of the land revenue.

### (2) The Joint or Landlord Village.

This type is prevalent in Uttar Pradesh and the



Punjab. Here the revenue is assessed on the village as a whole. There is a certain amount of collective responsibility among the landlords for the revenue. The village site is owned by the proprietary body. The waste land is allotted to the village. Village government was originally in the hands of the Panchayat—a body consisting of heads of senior families. Later on, under British rule, a Lambardar or headman was appointed. In these villages the co-proprietors constitute a local oligarchy, with the bulk of the village population as tenants or labourers under them. Panchayats have recently been established in these States.

In most cases it may be said that at present there is practically nothing really like a village organization in which the villagers have a share and a voice.

The village is the lowest administrative unit and is administered by the agency of the village officials—the Patel, the accountant and the watchman—persons bearing different titles in different provinces but representing the traditional organization of village life.

To maintain this organization and to collect taxes, the Government has provided every village with officials with varied responsibilities. They are:—

THE VILLAGE  
OFFICIALS.

### (1) The Headman.

The headman is in charge of the village for all purposes of the Government. He is called the Patel in Bombay, the Karnam in Madras, the Mukhia in Uttar Pradesh, and the Lambardar in the Punjab. He is responsible for everything in the village that concerns the public interest. All Government orders are communicated through him. He collects land revenue and sends it to the Taluka or Tahsil Treasury. He

maintains order. He turns persons of bad character away from the village and reports all crimes or disputes to the police. He attends to the needs of the officials touring in the village. He records births and deaths. He is responsible for health and sanitation and for informing the Government of any contagious or infectious disease that may break out in his village.

### (2) The Village Accountant.

He is called the Talati or Kulkarni in Bombay, the Patwari in other States. Generally he has three or four villages in his charge. He keeps the revenue accounts and has to keep up to date all village records dealing with assessments, ownerships, tenancy, mortgages and boundaries.

### (3) The Village Watchman.

He is the village policeman. Some villages have more than one. They are called Vethias in Bombay, Talaris in Madras and Chowkidars in the Punjab. They act as messengers from the Patel or Accountant to the Taluka headquarters. They look after the safety of the village at night. They are paid five to eight rupees per month or are given some land free of land revenue.

## CHAPTER III

### LOCAL SELF-GOVERNMENT

Local self-government is the government by its own citizens of a specific portion of a State, defined by locality. As the problems of a particular locality are peculiar to that locality, and as its citizens are alive to its special conditions and requirements, it is they who can most effectively conduct its administration. With this object, as well as to afford opportunities to citizens for training in the art of government, local self-government has been adopted as an integral part of the administrative structure of the country. It is under the control of the State Government, but it enjoys a good deal of autonomy, subject to that control.

It is not possible for the State Government to look after and provide for all the local requirements of the various localities. In the first place, the Government has no time for this work. Secondly, the local authorities have the great advantage of being personally familiar with conditions in their respective areas and are in a better position to meet their requirements, which at times vary from locality to locality. Local self-government puts this special knowledge at the service of the citizens who are directly concerned, and affords a training-ground for budding politicians.

Local self-government in India is entrusted to four different kinds of organizations:

- (1) Municipalities in towns,

- (2) Local Boards in rural areas,
- (3) Village Panchayats or Gaon Panchayats in villages, and
- (4) Port Trusts in important ports.

### (1) MUNICIPALITY

The unit of self-government in urban areas is the Municipality. The Corporations of Calcutta, Bombay and Madras have been constituted each under a separate Act and each with its own specific powers and privileges. Corporations have recently been constituted for some other towns in India.

#### CORPORATION OF CALCUTTA

The Corporation of Calcutta consists of 81 Councillors. Of these 75 are elected by 75 specified territorial constituencies, 1 is the chairman of the Trustees for the Improvement of Calcutta and 5 aldermen are elected by Councillors. Every person who has attained the age of 21 years and possesses the prescribed residential or educational or professional qualification is qualified as a voter. The Mayor is appointed by the Corporation. The Commissioner, who is the Chief Executive Officer, is also appointed by the State Government. Thus the whole municipal administration is under the control of the Corporation.

#### CORPORATION OF BOMBAY

The Municipal Corporation of Bombay consists of 124 Councillors elected at ward elections on the basis of adult franchise. The University of Bombay elects one Councillor.

The Councillors elect their President, called the Mayor. By convention the Mayor is elected in turn from the Hindus, Mohammedans, Parsis, and the European communities. The Municipal Commissioner, who is the Chief Executive Officer, is appointed by the Government and is generally a senior member of the Indian Civil Service.

#### CORPORATION OF MADRAS

The Municipal Corporation of Madras consists of 81 Councillors. 59 are elected at divisional elections, 4 Councillors are elected to seats reserved for labour, 8 are elected by trade and business associations, 1 by the trustees of the Port of Madras and 1 by the University of Madras. The election is held on the basis of adult franchise. The President is elected by the Corporation, while the Municipal Commissioner, who is the Chief Executive Officer, is appointed by the Government and is generally a senior member of the Indian Civil Service.

The Corporations which have been recently constituted for other major towns are composed of members elected on a similar basis.

In this way the cities enjoy a considerable measure of freedom in the administration of their municipal affairs. The State Governments have reserved certain powers of control in relation to appointments, contracts, raising loans and audit of accounts.

The Corporation of Bombay has an annual income of over  $9\frac{1}{2}$  crores of rupees, that of Calcutta over  $5\frac{1}{2}$  crores and that of Madras over  $2\frac{1}{2}$  crores.

#### OTHER MUNICIPALITIES

There are other municipalities in India, varying

from places with a population of quarter of a million to small towns with a few thousand inhabitants, and with a total of something over 21 million residents within their areas. During recent years the qualifications for voters have been lowered in every State. In every municipality the majority of the members are elected. The proportion of elected members varies from State to State.

In the State of Bombay, the Bombay Municipal Borough Act 1925 provides an adequate basis for municipal administration in the larger cities. The larger municipalities are styled Municipal boroughs. The Act has extended municipal franchise to occupants of dwellings or buildings with an annual rental charge of Rs. 12/-.

#### FUNCTION OF MUNICIPALITIES

The functions of the municipalities are of two kinds: (1) Obligatory and (2) Optional. All municipalities have to perform the obligatory functions while the nature and extent of optional functions depend upon the funds available for them. These functions are classed under the heads of Public Safety, Health, Conveyance and Instruction. The most important of the obligatory functions are—lighting, watering and cleansing of public streets, extinguishing fires, water supply, removal of obstructions, naming the streets, registering births and deaths, public vaccination, maintaining public hospitals and dispensaries and providing medical relief, maintaining primary schools, providing special medical aid and accommodation for the sick at times of the outbreak of dangerous diseases, and adopting measures to suppress and prevent a recurrence of such diseases. The most impor-



tant of the optional functions are the construction and maintenance of public parks, gardens, libraries, museums, lunatic asylums, halls, dharmashalas and guest-houses, planting and maintaining road-trees and other trees, taking a census and making a survey.

The State Government possess little control over details of local administration, but they have by law the power to supersede, suspend or abolish the Municipal Council. The Government has also the power of regulating the portion of elected to non-elected members in the Council. It can also require the appointment and prescribe the terms of service of a Health Officer or Engineer. Grants of salary to the Chairman require the approval of the Government.

#### MUNICIPAL FINANCE

The municipalities are given a wide choice in the form of the taxes which they may levy. Octroi duties, terminal taxes, taxes on personal income, fixed property, profession, and vehicles have all been utilized for particular services such as education and water supply. There are also special taxes and cesses imposed in many municipalities. In financial matters the municipalities have full freedom, and the Government's control is limited generally to cases in which the interest of the general public calls for special protection. The Government is allowed to alter the municipal budget if it considers that due provision has not been made for loan-charges and for the maintenance of the working balance. It may also intervene in the administration by way of preventing or initiating action in matters affecting human life—health, safety, and public tranquillity.

The income of the municipalities is derived primarily

from taxation, contributions from State revenues and other sources.

### CANTONMENTS

Large city areas where troops are stationed are outside the administrative limit of the municipalities. They are called Cantonments and are administered by elected Cantonment Boards, with official Presidents. The official control of Cantonment administration rests with the Army Department of the Government of India.

### (2) LOCAL BOARDS IN RURAL AREAS

The duties and functions assigned to the municipalities in urban areas, are, in rural areas, entrusted to District Boards and Local Boards. The system of rural self-government differs widely in all States. The most important unit of self-government is the District Board, whose jurisdiction is co-terminous with the District. The majority of the members are elected on a wide franchise. Communal elections for Mohammedans are provided in Bombay State and Uttar Pradesh for District Boards, and in Assam for Local Boards. Elsewhere the power of nomination is used by the Government to secure representation for minorities. Almost everywhere the Chairman is an elected member, except in the East Punjab, where the members have option of having an elected Chairman.

### FUNCTIONS

The functions of the District Board are much the same as those of municipalities, allowing for the

different conditions of towns and country. The Government has some powers of control and intervention as in the case of municipalities. In Madras the Boards have power to conduct and manage light railways, and the Tanjore Board actually operates 134 miles of railway.

### TALUKA BOARD

Within the area of the District Board are minor authorities varying in names, functions and composition from State to State. The Taluka or Circle Boards exist in all the States, except in the East Punjab and Uttar Pradesh. In Bengal, Madras and Orissa, they are called Union Committees. Each has jurisdiction over a Taluka and is a subordinate agency of the District Board. It consists of elected members and as a rule chooses its own Chairman. The elected members of a District Board are generally chosen by the members of the Taluka Boards.

### FINANCE OF RURAL AUTHORITIES

The main source of revenue of rural authorities is a tax or cess on the annual valuation of the land and is collected with the land revenue. This is supplemented by a tax on professional men and by tolls on vehicles. A very large proportion of revenue consists of subsidies or other grants from the State Government. These grants are given in aid of particular services and also in the form of capital sums for the constructional works. The total income of the Boards is over  $11\frac{1}{2}$  crores of rupees. The principal objects of expenditure are education, civil works such as roads, bridges and tanks, and medical relief.

## (3) VILLAGE PANCHAYATS

The Decentralization Committee 1908 recommended that with a view to making the village the basis of local self-government, an attempt should be made to constitute and develop the village council, to which the time-honoured title of "Panchayat" might be applied, for the administration of village affairs. In accordance with these recommendations Village Panchayats were set up in the Punjab in 1912, and subsequently in Uttar Pradesh and other States. Since 1919 they have been set up to a greater or less extent in all States, under special Village Panchayat Acts. Having regard to their importance in ancient Indian politics, the Constitution provides that the State shall take steps to organize Village Panchayats and endow them with such powers and authorities as may be necessary to enable them to function as units of self-government. Thus the Constitution has given a directive to revive and revitalize the Village Panchayats.

The Village Panchayat or Union Board has jurisdiction over a village or a group of villages. Its primary function is to look after such matters as wells and sanitation. It is sometimes entrusted with the care of minor roads and the management of schools and dispensaries, and in Madras with village forestry and irrigation works. In some States it has also been given power to deal with petty criminal and civil cases.

The members are almost entirely elected. In Madras, Bombay and Assam two male adults, and in Madhya Pradesh all adults in the village, have the vote. Voting is often by show of hands.

Despite all the efforts of Government officials to establish Village Panchayats, progress has been very

slow. However, the development is promising in Uttar Pradesh, Bombay, Bengal and Madras. In Uttar Pradesh Gaon Panchayats have been a success. Outside these four States, the movement is still in its infancy.

The villages have lost their organic unity and vitality under the pressure of British revenue and judicial administration during the last hundred years. The lack of adequate funds for their work and the unwillingness of the villagers to provide them are the chief obstacles to progress. In some cases the necessary intelligence, integrity, character and literacy are unfortunately wanting. Many villages are entirely apathetic. Some are dominated by the influence of vested interests, communal feeling and caste and communal friction. It is hoped that the experiment will meet with success with the spread of literacy, the provision for adequate funds and the spread of the democratic spirit.

#### (4) PORT TRUSTS

The management of the important ports of Bombay, Calcutta and Madras is entrusted to the Boards of Commissioners for these ports. They have adequate finances, resources and full control over their management. The major ports are under the control of the Government of India.

#### CONCLUSION

The progress of local self-governing institutions has not been as satisfactory as might have been expected since the time of Lord Ripon. During recent years their working presents a picture of neither unrelieved failure nor unqualified success. There have been glaring abuses as well as brilliant successes.

The importance of the development and successful working of these institutions can hardly be exaggerated. Now that official control has been removed they ought to develop on healthy lines. But there are various difficulties in the way. Firstly, the size of an average district, which is normally the unit in rural areas, is very large. Secondly, they have no efficient and properly trained staff. Thirdly, their resources are limited. Fourthly, the calibre of the members has not been up to expectation, hence at times there has been abuse of power. Fifthly, there is the importation of communal and sectional differences into the affairs of local bodies, and lastly, the apathy of the villagers, whose sense of civil duty has not yet been either awakened or developed. The real solution lies in remedying these deficiencies.



## CHAPTER IV

### THE POLICE AND JAILS

#### I. POLICE

##### HISTORICAL

The indigenous system of police in India was organized on the basis of land tenure. The Zamindar had to apprehend all disturbers of the peace and to restore stolen property or make good its value. Under the Zamindars were a number of subordinate tenure-holders who were responsible for the maintenance of the peace in their areas. This was also as a rule the joint responsibility of the villagers, enforced through the headman. He was always assisted by one or more village watchmen, who formed the real executive police of the country. The watchman was helped by the male members of his family and at times by the whole village community. His duties were to keep watch at night, find out all arrivals and departures, observe all strangers and report all suspicious persons to the headman. He was required to take note of the character of each man in the village. If a theft was committed within the village boundary, it was his business to detect the thieves. In towns the administration of the police was entrusted to an officer called the Kotwal, who was usually paid a large salary from which he was required to defray the expenses of a large police establishment. This system was well suited to the needs of a simple homogeneous agricultural community, but it could not stand the strain of political disorder and the

- relaxation of central control during the dissolution of the Mogul Empire.

When the British acquired power they retained the village system and tried to improve the machinery of supervision. Lord Cornwallis relieved the Zamindars of the liability for police service, which was commuted for a payment or enhanced revenue. The place of the Zamindars was taken by the District Magistrates, who had under them for police purposes a staff of darogas with subordinate officers and a body of peons. In cities the office of Kotwal was continued and a daroga was appointed for each ward. The results of the changes were not very satisfactory. Each Province attempted to reorganize its police organization between 1801 and 1860. On the annexation of the Punjab the question of reform in police organization was taken up. The necessity for such reform, however, was not confined to the Punjab, and in August, 1860, the Government of India appointed a Commission to inquire into the whole question of police administration in British India.

This Commission recommended the abolition of the military police as a separate organization and the constitution of a single homogeneous force of civil constabulary for the performance of all police duties. To secure unity of action and identity of system the general management of the force in each Province was entrusted to an Inspector-General. The police in each district was to be under a District Superintendent, aided in large districts by an Assistant District Superintendent, both officers being usually Europeans. The subordinate force recommended consisted of inspectors, head constables, sergeants and constables; the head

THE POLICE COM-  
MISSION OF 1860.

constable being in charge of a police station, and the inspector of a group of stations. The police forces of the various States are still organized on the general basis laid down by the Commission, though there has been some divergence from it in matters of greater or less importance. The system introduced in 1861 was on the whole efficient, but in actual working it revealed some defects.

A Police Commission was appointed in 1902 to improve the organization. In its report, submitted in

THE POLICE COM-  
MISSION OF 1902.

1903, it made many comprehensive recommendations regarding all aspects of police organization. Its main recommendations were accepted by Government with some modifications in matters of detail. They have been carried out to a very large extent in all States.

### POLICE ORGANIZATION IN INDIA

The existing police organization is essentially provincial, administered by the State Governments, subject only to the general control of the Government of India. The police establishment forms in most States a single force under the State Government, and is formally enrolled. In Bombay there is a separate force for each district. At the head of the police organization in each State is the Inspector-General who has the general control of the police. Deputy Inspector-Generals hold subordinate charge of portions of the State known as "ranges."

The district is the chief unit for police as for general administration. At the head of each district is a District Superintendent of Police (D.S.P.) with powers of enlistment and dismissal of constabulary. He is responsible

POLICE ORGANIZATION IN  
A DISTRICT.

for the discipline and internal management of the force to his departmental heads: the Deputy Inspector-General of Police, the Inspector-General of Police, and the Minister, and is subordinate to the District Magistrate in all matters connected with the preservation of peace, the maintenance of order and the detection and suppression of crime in the district. He is assisted by one or more Assistant or Deputy Superintendents of Police.

The district is sub-divided for police purposes into sections or "Circles" under Inspectors, and the Circle is again split up into areas in each of which is a police station in charge of a sub-inspector. The area controlled by a police station averages 100 square miles and may be much larger. There are also subsidiary police stations known as outposts, which are most numerous in Bombay.

At the headquarters of each district a reserve is maintained which supplies men for escort and other duties and serves to strengthen the police in any part of the district where occasion may arise. The reserve force is kept in readiness for dealing with local disturbances. Some of the general-duty police are armed with lathis, swords, smooth-bores, or in some cases with rifles. The truncheon is the usual weapon of the constable. A small proportion of police are mounted. A force of military police is still maintained in some States.

### VILLAGE POLICE

The regular police are largely dependent for information and assistance on the village officers. Each police station has within its jurisdiction a number of villages. In each village there is a Chowkidar or village watchman. The village watchmen are not

stipendiary, but receive perquisites from the inhabitants of the village or rent-free lands or small sums of money from Government. Hereditary claims to the office are recognized wherever possible. It is their special duty to prevent crime and public nuisance and detect and arrest offenders within the village limits. In each village the police are under the charge of the Police Patel, who is also, in small villages, a revenue Patel. His duties as Police Patel are to furnish the Magistrate of the district with any returns or information called for, and to keep him constantly informed as to the state of crime and all matters connected with the village police and the health and general conditions of the community in his village. The supervision and control of the village officers are entrusted to the Collector or Deputy Commissioner and his subordinates, and not to the regular police.

In towns the police organization is on much the same basis as in rural areas. In the three Presidency towns,

#### TOWN POLICE.

Calcutta, Bombay and Madras, the police are organized as a separate force under a Commissioner who is responsible both for law and order and for departmental training and efficiency. He is not the subordinate of the State Inspector-General and he deals direct with Government.

A special police organization exists in connection with the railways. The railway police are organized separately from the district police but act in co-operation with them. The police employed along the railway lines are under the supervision of Superintendents. Their pay and prospects are identical with those of the district police. The cost of dealing with crime and pre-

#### RAILWAY POLICE.

serving order is wholly debited to the State revenues, and that of the "Watch and Ward Staff" is borne by the railway administrations.

In addition to the police attached to individual districts there exists a special organization both in the mofussil and cities, for the detection and investigation of specialist and professional crimes, called the Criminal Investigation Department, which includes the Finger-Print Bureau and is under the immediate control of a Deputy Inspector-General of Police. The Criminal Investigation Department, in co-operation with the police of other States, is employed in the prevention of the spread of serious crime, in the investigation into crime having ramifications in several jurisdictions, and in the pursuit of criminals. The Finger-Print Bureau has been working satisfactorily since 1901.

The Central Government maintains a special establishment of Police for dealing with offences relating to Central matters and inter-State offences and also an establishment for the investigation of these offences.

## II. JAILS

### HISTORICAL

The history of prison reform in India dates from the appointment in 1836 of the Committee of which Macaulay was a member. It reported that in the great essentials of cleanliness, provision of food and clothing and attention to the sick, the state of Indian prisons compared favourably with those of Europe. It criticized severely the corruption of the subordinate estab-



lishment and insisted on rigorous measures. Two more Committees were appointed in 1866 and 1877. In 1888-39 the Government of India appointed another Committee whose object was to examine the actual carrying-out of the principles laid down by earlier committees and to endeavour to produce greater uniformity in practice throughout India. This task was entrusted to two experienced jail officers, Drs. Walker and Lethbridge, who produced an admirably clear and businesslike report which covered nearly the whole field of internal administration of the Jail Department. This report was supplemented by the report of a Committee in 1892. Its proposals were embodied in the Indian Prisons Act of 1894.

Under the Government of India Act, 1919, the maintenance of prisons was within the sphere of Provincial Governments but subject to All-India Legislation. With the object of laying down general principles of universal application, the Government of India appointed a Jail Committee in 1919. The report of this Committee, which contained the first comprehensive survey of Indian prison administration, laid stress on the necessity of improving and increasing existing jail accommodation, of recruiting a better class of warders, of providing education for prisoners and of developing prison industry to meet the needs of the consuming departments of Government. It recommended the separation of civil from criminal offenders and the creation of Children's Courts. Pointed attention was drawn to the need for improving the reformatory side of the Indian system. It also recommended the segregation of habitual criminals, the provision of separate accommodation for prisoners on, or awaiting, trial, and the

abolition of certain disciplinary practices liable to harden or degrade the prison population.

All States have more or less carried out these recommendations. Overcrowding has been remedied. The infliction of whipping is carefully regulated. Solitary confinement as a prison punishment has been abolished. The remission system has been improved. Convicts are trained in useful trades, and juvenile courts have been established. A general improvement has been made in the food and clothing of prisoners. Concessions are made with regard to interviews and letters of prisoners. In several States advisory boards have been constituted to review periodically the sentences of long-term prisoners. The ameliorative treatment of prisoners has not escaped notice. The Borstal system for selected juveniles and young adults is flourishing in several States. In Bombay there has been a Borstal School at Dharwar since 1905. Reformatory and Industrial Schools are provided in many large cities. Voluntary organizations, such as Released Prisoners' Aid Societies, are established in Bombay and Calcutta. In many places honorary visitors are appointed. In short, many reforms have been introduced to humanize jail administration.

### JAIL ADMINISTRATION

Jail Administration in India is regulated by the Prison Act of 1894 and the rules issued under it. There

are three classes of jails: in the first place, large central jails for convicts sentenced to more than one year's imprisonment; secondly, district jails at the headquarters of districts, and thirdly, subsidiary jails and "lock-ups" for prisoners on trial and convicts sentenced to short terms of

imprisonment. In each State the Jail Department is under the control of an Inspector-General of Prisons. He is generally an officer of the Indian Medical Service with jail experience. The Superintendents who are in charge of central jails are usually recruited from the same service. The district jail is under the charge of a Civil Surgeon and is frequently inspected by the District Magistrate. The staff under the Superintendents includes, in large central jails, a Deputy Superintendent to supervise the jail manufactures, and in all central and district jails one or more subordinate medical officer. The executive staff consists of jailers and warders. Convict petty officers are also employed in all central and district jails, the prospect of promotion to one of these posts being a strong inducement to good behaviour.

The general characteristic of the Indian prison system is confinement in association by day and night. The desirability of separate confinement by night and cellular confinement during the first part of long and the whole of short sentences is recognized. Some steps have been taken in this direction during recent years, and many sleeping wards have been fitted with cubicles.

#### CLASSIFICATION OF PRISONERS

Prisoners are divided into the following classes which are kept separate from one another: persons under trial, civil prisoners, females, boys, youths and adult male convicts. There are also political prisoners convicted of political offences. Persons who are detained under the Preventive Detention Act are generally kept in jails and treated as *detenus*. Habitual offenders are kept separate as far as possible. The system of fettering prisoners in general has long been abandoned, and

fetters are now only used as punishment or to restrain violence. The hours of work in jails amount to about nine a day. The dietary varies in different parts of the country with the staple food of the people.

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